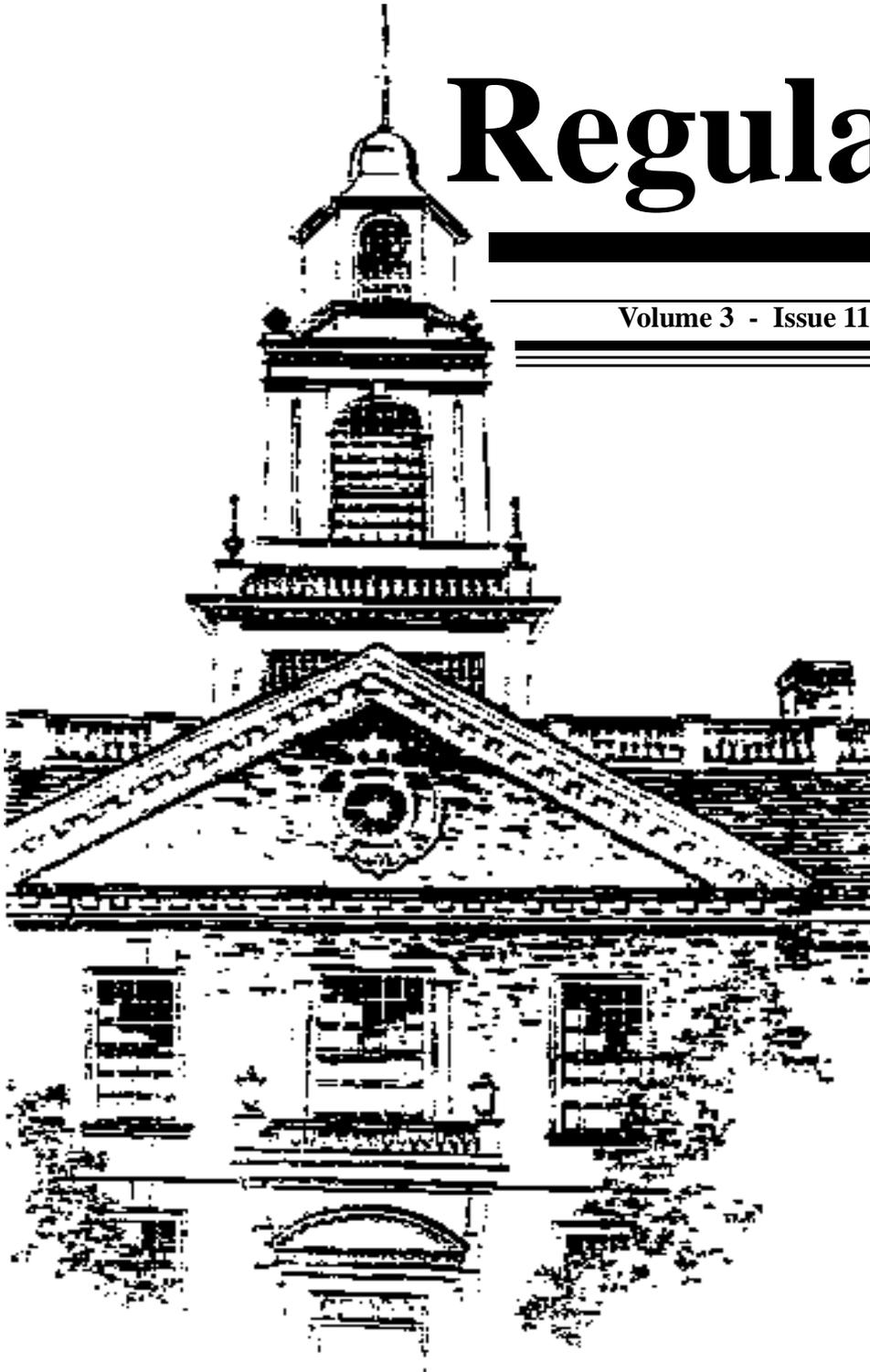

Delaware Register of Regulations



Issue Date: May 1, 2000

Volume 3 - Issue 11

Pages 1408 - 1589

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before April 15, 2000.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

1409

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

3 **DE Reg.** 737 - 742 (12/1/99)

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

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CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.

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**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122 (3)(u) (16 Del.C. 122(3)(u))

*** PLEASE NOTE: THE ORDER ADOPTING THE REVISION TO THE DELAWARE FOOD CODE STATED THAT SECTION 8-604.20 WAS BEING DELETED FROM THE FINAL RULE AND THE SUBSEQUENT SECTIONS RENUMBERED. THE APRIL ISSUE OF THE REGISTER OF REGULATIONS DID NOT REFLECT THIS CHANGE. THE FINAL ORDER ADOPTING THE DELAWARE FOOD CODE IS REPRINTED IN ITS ENTIRETY.**

Adoption of State of Delaware |
Rules and Regulations Governing |
The State of Delaware Food Code |

Nature of the Proceedings:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt Rules and Regulations Governing The State of Delaware Food Code. The DHSS’s proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Chapter 1, Section 122 (3) (u).

On October 1, 1999 (Volume 3, Issue 4), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 1, 1999, or be presented at public hearings on October 27 or October 28, 1999, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

A summary of the comments is part of the accompanying “Summary of Evidence.”

Findings of Fact:

The Department finds that the proposed rules in Section 3-603.11 of the regulations, pertaining to Consumer Advisory, shall not be adopted. However, said section will be reserved for future Consumer Advisory rules.

Exclusive of the proposed rules in Section 3-603.11 as described above, the Department finds that the proposed regulations as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the October 1, 1999 Register of Regulations, based on comments received during

the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules and Regulations Governing The State of Delaware Food Code are adopted as modified and excepting amendments in Section 3-603.11. Said regulations shall become effective April 11, 2000 after publication of the final regulation in the Delaware Register of Regulations.

Gregg C. Sylvester, MD, Secretary
March 15, 2000

Summary of Evidence

**State of Delaware Rules and Regulations Governing the
State of Delaware Food Code**

Public hearings were held on October 27, 1999, in the Department of Transportation Southern District Office, in Georgetown and in the Department of Transportation Administration Building in Dover, and on October 28, 1999, in the Carvel State Office Building, in Wilmington, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing The State of Delaware Food Code. The announcements regarding all public hearings were advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Thom May, Director of Community Environmental Health Services, and the Office of Food Protection staff made the agency’s presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. With few exceptions, public testimony focused on the six national level problematic issues between the food industry and the Food and Drug Administration (FDA). Those concerns and the DHSS (Agency) response are as follows:

- Members of the food industry and the Delaware Food Safety Council (DFSC) would like a 10 year exemption versus a 5 year exemption as allowed in the 1999 Food Code to replace refrigeration equipment that does not meet the 41 (F) degrees or below cold holding temperature requirement. The food industry would also like to see open-top, grill-line and prep reach-in refrigeration units be exempted from this requirement for the life of the equipment.

Agency Response: DHSS recommends retaining the 5 year exemption requirement. A survey of five major refrigeration manufacturers (Hussman, Hobart, Hill Phoenix, Delfield and Beverage Air) revealed that they have offered industry refrigeration units (open-air, reach-in, restaurant,

merchandise display) that meet the 41 (F) degree standard since the early 1990s. DHSS pledges to work with the DFSC and industry during the 1999 Food Code 1-year phase-in period to identify refrigeration units that do not meet the 1999 Food Code standard. By working with industry and identifying these units early, industry can phase-in new purchases over the next 5 years to ease the financial load. In addition, under the 1999 Food Code, Public Health has the authority to grant case-by-case, temporary variances for bonafide hardships. DHSS will also monitor the science and feasibility of this requirement as provided by the FDA, and will consider extending this phase-in period in the future if warranted. It is the agency's contention that the public health benefits of compliance with the refrigeration requirement far outweigh the cost or inconvenience associated with the 5 year phase-in period.

- Members of the food industry and the DFSC asked that the 1999 Food Code, food hot holding temperature requirement of 140 (F) be reduced to 130 (F).

Agency Response: DHSS recommends retaining the 140 (F) hot holding temperature requirement. Although from an unscientific standpoint, to lower this requirement seems inconsequential. However, this standard has a scientific basis that takes into consideration equipment variables and human error. Lowering this standard by 10 degrees could mean the difference between rapid food pathogen growth and no pathogen growth. Food-borne illnesses are directly linked to disease causing pathogen growth. In a meeting held after the public hearings, the DFSC voted to accept the 140 (F) food hot holding standard in the 1999 Food Code as written.

- Members of the food industry and the DFSC asked that the 1999 Food Code requirement that prohibits bare-hand contact with ready-to-eat foods be changed to minimal bare-hand contact.

Agency Response: DHSS recommends retaining this requirement. In this section of the 1999 Food Code there are provisions providing regulators leeway to approve minimal bare-hand contact on a case-by-case basis with ready-to-eat foods. DHSS contends that prohibited bare-hand contact with ready-to-eat foods provides maximum protection against ready-to-eat food contamination. Through proper education, supervision and awareness, this requirement will have minimal impact on the food-service industry while providing maximum protection to the consumer. In a meeting held after the public hearings, the DFSC voted to accept this requirement of the 1999 Food Code as written.

- Members of the food industry and the DFSC asked to have a language change (by adding an "or")

made in the section of the 1999 Food Code requiring demonstration of knowledge of the person in charge.

Agency Response: DHSS recommends retaining the original language of this section. By adding an "or" to the demonstration of knowledge section, makes compliance with the 1999 Food Code an optional indicator of knowledge for the person in charge. DHSS contends that knowledge that reflects compliance with the 1999 Food Code cannot be optional for the person in charge of food service operations. In a meeting held after the public hearings, the DFSC voted unanimously to accept this section of the 1999 Food Code as written.

- Members of the food industry and the DFSC asked that the section of the 1999 Food Code requiring a consumer advisory about undercooked or raw food be deleted.

Agency Response: DHSS recommends deleting this requirement, but reserve this section (3-603.11) for future FDA Consumer Advisory rules. Based on FDA's recommendation, DHSS prefers not to adopt a requirement it will not enforce. FDA's current recommendation on the Consumer Advisory section of the 1999 Food Code is to not enforce this requirement until acceptable language and guidance is agreed upon at the national level. When this issue is resolved at the national level, DHSS will analyze the FDA Consumer Advisory guidance and in cooperation with the DFSC consider adoption.

- Members of the food service industry and the DFSC recommended that food inspectors be required to have the same knowledge as is required in the 1999 Food Code of the person in charge of a food service operation.

Agency Response: The agency agrees with the food service industry and the DFSC. Agency Food Service Inspectors are required to have qualification training and recurring training as part of their certification process. This level of training exceeds that which is required of the person in charge of a food service operation. In a meeting held after the public hearings, the DFSC voted unanimously to accept this section of the 1999 Food Code as written.

- Two members of the food service industry and the DFSC asked in the event of a hardship, existing restaurants be considered for a variance or waiver in meeting the strict facility guideline standards set forth in the 1999 Food Code.

Agency Response: In the 1999 Food Code under the Modifications and Waivers section, public health has the

authority to grant facility variances on a case-by-case basis.

- A member of the food service industry and the DFSC voiced concern over the wording, “criminal remedies” used under the Responsibilities of the Permit Holder section of the 1999 Food Code.

Agency Response: DHSS recommends retaining the wording in this section as written. Although these words sound harsh, it is necessary language to make food service permit holders aware that the 1999 Food Code is linked to and enforceable by established Delaware Statute. This particular wording, “criminal remedies” is needed for the rare occasion when a food service proprietor willfully, repeatedly and knowingly violates food safety procedures that jeopardizes the health of residents or visitors to Delaware.

Upon further review and advisement by the Deputy Attorney General, the Agency has decided to delete Section 8-604.20, of the regulation, pertaining to Administrative Penalties. This section was deleted due to DHSS not having specific statute authority to enforce such penalties.

In addition, page number errors were discovered on the index page of the 1999 Food Code. These errors do not change the intent or regulatory nature of the Code and will be corrected prior to publication.

The public comment period was open from October 1, 1999 to November 1, 1999.

Verifying documents are attached to the Hearing Officer’s record. The regulations have been approved by the Delaware Attorney General’s office and the Cabinet Secretary of DHSS.

STATE OF DELAWARE FOOD CODE ADDENDUM TO THE 1999 FDA FOOD CODE

Chapters 1 – 8 of the “1999 FDA Food Code” is being herewith adopted by the State of Delaware as the primary document in regulating retail food establishments in the State. The text below is an addendum to Chapter 8, to comply with Delaware-specific requirements and is to be appended at the end of Chapter 8 in the primary document, Chapters 1 – 8 of the “1999 FDA Food Code”, which can be found on the Internet at the following address: <http://vm.cfsan.fda.gov/~dms/fc99-toc.html>.

*** PLEASE NOTE THAT THE PROPOSED REGULATIONS ARE BEING INCORPORATED BY REFERENCE IN ACCORDANCE WITH THE PROCEDURES AS AUTHORIZED BY 29 DEL.C. 1134.**

PART 8-6 ENFORCEMENT PROCEDURES

8-601 Re-inspection Fee

8-601.10

(A) A re-inspection fee shall be assessed under the following circumstances

(1) When critical violations are shown to exist during a follow-up inspection

(2) When non-critical violations are shown to exist on successive routine inspections

(3) When a complaint inspection requires a follow-up inspection to confirm compliance.

(4) When an inspection is required to determine compliance with the terms of a corrective action plan or an administrative hearing.

(5) To determine the proper posting of a valid permit.

(6) Any other follow-up inspection deemed necessary by the regulatory authority to determine compliance with these Regulations.

(B) The fee shall be that required by 16 Del. C. Chap. 1, 134.

(C) Failure to pay the re-inspection fee, as specified, shall result in the automatic suspension of the permit to operate a food establishment. The permit shall remain suspended until the regulatory authority receives full payment of all fees.

8-602 Administrative Action

8-602.10 General

If the regulatory authority determines that a food establishment is operating without a valid permit, or that condition(s) exist(s) in a food establishment which represent(s) an Imminent Health Hazard or if serious violations, repeat violations, or general unsanitary conditions are found to exist, administrative action may occur. Administrative action will be conducted in accordance with the Procedures for Office of Food Protection Prosecutions.

(A) Operation without a Permit

If food establishment is found operating without a valid permit as required by 8-301.11 of these Regulations, the regulatory authority shall order the facility immediately closed. The closure shall be effective upon receipt of a written notice by the person in charge of the food establishment or employee of the food establishment. A closure notice statement recorded on the inspection report by the representative of the regulatory authority constitutes a written notice. The food establishment shall remain closed until a permit application and applicable fees and any required plans have been received and approved by the Regulatory Authority. In order to open, the food establishment must comply with 8-303.10 of these Regulations.

(B) Imminent Health Hazard(s)

(1) Suspension of Permit

If some condition(s) is/are determined to exist in the food establishment which present(s) an imminent

health hazard to the public, the regulatory authority, or his designee, in the county in which the food establishment operates may suspend the operating permit of the food establishment without a hearing for a period not to exceed ten (10) government business days. The suspension shall be effective upon receipt of written notice by the person in charge of the food establishment or employee of the food establishment. A suspension statement recorded on the inspection report by the inspecting regulatory representative constitutes a written notice. The permit shall not be suspended for a period longer than ten (10) government business days without a hearing. Failure to hold a hearing within the ten (10) government business day period shall automatically terminate the suspension.

(2) The permit holder of the food establishment may request, in writing, a hearing before the regulatory authority at any time during the period of suspension, for the purpose of demonstrating that the imminent health hazard(s) no longer exist. The request for hearing shall not stay the suspension.

(C) Serious Violations, Repeat Violations and General Unsanitary Conditions

When conditions exist in a food establishment that represent serious violations, repeat violations and general unsanitary conditions in a food establishment, the regulatory authority may initiate a corrective action plan or schedule a hearing.

8-603 Agency Emergency Actions

8-603.10 Food may be examined or sampled by the regulatory authority as often as necessary for enforcement of these Regulations.

8-603.20 All food shall be wholesome and free from spoilage. Food that is spoiled or unfit for human consumption shall not be kept on the premises. The established administrative procedures for the implementation and enforcement of the provisions of 16 Del. C., Chapter 33, relating to the embargo of misbranded or adulterated food, and penalties shall be applicable to this Section.

8-604 Penalties

8-604.10 Any person (or responsible officer of that person) who violates a provision of these Regulations, and any person (or responsible officer of that person) who is the holder of a permit or who otherwise operates a food establishment that does not comply with the requirements of these Regulations shall be subject to the provisions of 16 Del. C. §107.

~~8-604.20 Any person (or responsible officer of that person) who violates a provision of these Regulations, and any person (or responsible officer of that person) who is the holder of a permit or who otherwise operates a food establishment that refuses,~~

~~fails or neglects to comply with an order of the Secretary shall be subject to an administrative penalty of not less than \$100 and not more than \$1,000, together with costs.]~~

8-604.~~30~~ 20] The regulatory authority may seek to enjoin violations of these Regulations.

8-604.~~40~~ 30] A conspicuous, colored placard shall be prominently displayed at all entrances of food establishments meeting the following criteria:

- (A) Failure to obtain a valid permit; or
- (B) whose permit stands suspended; or
- (C) whose permit stands revoked; or
- (D) whose permit has expired due to non-payment of a permit fee.

~~[Current Status of Consumer Advisory Language Regarding] [§ 3-603.11 (Reserved)]~~

~~[The following information is not part of Chapter 3 and is not intended to be included in the codified portion of the Food Code. It is inserted here to provide a summary of recent events surrounding the matter of a consumer advisory, addressed in § 3-603.11 of the Code. In cases where the Food Code is adopted through incorporation by reference, this page may be removed.]~~

~~A consensus as to what constitutes satisfactory compliance with § 3-603.11 was reached at the 1998 Conference for Food Protection (CFP) meeting. A third option for the consumer "reminder" was added later. This insert page is to alert the reader to the options available to food establishments in advising consumers of the increased possibility of foodborne illness when animal derived foods are eaten raw or undercooked.~~

~~Included in Annex 3 is a full discussion of the evolution of the 1998 CFP consensus, satisfactory compliance, applicability of the Code provision, and the meaning and application of the phrase that appears in § 3-603.11, i.e., "or otherwise processed to eliminate pathogens."~~

~~There are two components to satisfactory compliance: Disclosure and Reminder~~

~~Disclosure is satisfied when:~~

- (1) ~~Items are described, such as:~~
 - (a) ~~Oysters on the half shell (raw oysters);~~
 - (b) ~~Raw egg Caesar salad, and~~
 - (c) ~~Hamburgers (can be cooked to order); or~~
- (2) ~~Items are asterisked to a footnote that states that the items:~~

- (a) ~~Are served raw or undercooked, or~~
- (b) ~~Contain (or may contain) raw or undercooked ingredients.~~

~~Reminder is satisfied when the items requiring disclosure are asterisked to a footnote that states:~~

~~(1) Regarding the safety of these items, written information is available upon request;¹~~

~~(2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or~~

~~(3) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.~~

~~¹Essential criteria for such written information are being developed and will be made available with a downloadable model brochure on the CFSAN Web Page at <http://www.cfsan.fda.gov>. All brochures must meet these essential criteria.]~~

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a) (7 Del.C. 903 (e)(2)(a))

* PLEASE NOTE: THE FOLLOWING PROPOSED REGULATION WAS OMITTED IN ERROR FROM THE APRIL 2000 ISSUE OF THE DELAWARE REGISTER OF REGULATIONS

TITLE OF THE REGULATION:

Tidal Finfish Regulations

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend Tidal Finfish Regulation No. 7 to adjust the recreational size limits of striped bass to one a day between 24 inches and 28 inches and one a day at more than 28 inches in order to reduce the landings of striped bass over 28 inches by 14% in 2000.

POSSIBLE TERMS OF THE AGENCY ACTION:

If Delaware does not comply with the requirements of the Fishery Management Plan for striped bass, the striped bass fishery may be closed by the Secretary of the U.S. Department of Commerce.

**STATUTORY BASIS OR LEGAL AUTHORITY T
AC :**

7 Del. C. §903 (e)(2)(a)

**OTHER REGULATIONS THAT MAY BE AFFECTED
BY THE PROPOSAL:**

None

NOTICE OF PUBLIC COMMENT :

Individuals may present their opinions and evidence and/or request additional information by writing, calling (302-739-3441) or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901. A public hearing on this proposed amendment will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover, DE at 7:30 PM on Tuesday, May 16, 2000. The record will remain open for written comments until 4:30PM on May 26, 2000.

PREPARED BY :

Charles A. Lesser(302)-739-3441 March 21, 2000

**TIDAL FINFISH REGULATION 7. STRIPED BASS
POSSESSION SIZE LIMIT; EXCEPTIONS.**

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession ~~any more than two (2)~~ any more than two (2) striped bass from the tidal waters of this State ~~that measures less than twenty-eight (28) inches in total length in one day provided one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length.~~ that measures less than twenty-eight (28) inches in total length in one day provided one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length.

b) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length or more than 32 inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~28~~ 24 inches, total length, unless said striped bass is in one or more of the following categories:

1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or

2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non

commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty ~~eight (28)~~ four (24) inches in total length.

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length or more than 32 inches in total length.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS IN OPTOMETRY**
Statutory Authority: 24 Delaware Code,
Section 2104(1) (24 **Del.C.** 2104(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2104(1), the Delaware Board of Examiners in Optometry proposes to revise its rules and regulations. The proposed revisions clarify the Board's law as it relates to therapeutic licensing for reciprocity applicants. Specifically, the proposed revisions to Rule 4.0 provide that an applicant, therapeutically licensed in another state, must demonstrate that that state allows the use and prescription of diagnostic and therapeutic drugs at least equivalent to that permitted by Delaware. If the state from which the applicant seeks reciprocity is not therapeutically equivalent, the applicant must meet the requirements of 24 **Del.C.** §2108. Proposed revisions to Rule 11.0 further clarify the requirements for therapeutic certification and specify that the 40 hours of clinical experience required under §2108(b) must be obtained no earlier than 24 months prior to application.

A public hearing will be held on the proposed Rules and Regulations on Thursday, June 15, 2000 at 6:45 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan

Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

Board of Examiners in Optometry

- 1.0 Definitions
- 2.0 Qualifications and Examinations
- 3.0 Internship
- 4.0 Reciprocity
- 5.0 Use of Diagnostic Drugs
- 6.0 Use of Therapeutic Drugs
- 7.0 Minimum Standards of Practice
- 8.0 Ethics
- 9.0 Hearings
- 10.0 Continuing Education Requirements
- 11.0 Therapeutic Certification
- 12.0 Unprofessional Conduct

1.0 DEFINITIONS

Dispensing: The practice of optometry shall include the dispensing of contact lenses. "Dispensing" shall be defined as: "Contact lens dispensing" means the fabrication, ordering, mechanical adjustment, dispensing, sale and delivery to the consumer of contact lenses. Contact lenses must be dispensed in accordance with a written contact lens prescription from a licensed physician or optometrist which

includes lens curvature, diameter, power, material, manufacturer and an expiration date not to exceed one year, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea and evaluating the physical fit of the contact lenses.

Duly licensed: For purposes of 24 Del.C. §2106(a) and these regulations, the term “duly licensed” shall be defined as: a person who satisfies the applicable requirements under 24 Del.C. §§2107, 2108, 2110 and 2111 (or alternatively §2109 and §2111), and who has been issued a license in good standing in accordance with §2112. A person holding a valid temporary license shall not be deemed to be duly licensed for purposes of Chapter 21, Title 24 and these regulations, and may only engage in the practice of optometry as outlined in §2110 and Section 3 of these regulations.

Premise : For purposes of 24 Del.C. §2118(b) and these regulations, the phrase “on the same premises” shall be defined as: being within the immediate physical boundaries of the office of the licensed supervising practitioner. The “office” of the licensed supervising practitioner shall not include space, within a building or structure owned or leased by the licensed supervising practitioner, in which the licensed supervising practitioner does not engage in the practice of medicine, osteopathy, ophthalmology or optometry

Supervision: For purposes of 24 Del.C. §2118(b) and these regulations, the term “supervision” shall be defined as: the physical presence of the licensed practitioner at some time during the fitting for the purpose of evaluating and verifying the contact lens fit and the patient’s ocular health.

2.0 QUALIFICATIONS AND EXAMINATIONS

2.1 Every candidate for registration must meet the following qualifications:

2.1.1 Have received a degree of “Doctor of Optometry” from a legally incorporated and accredited optometric college or school which has been approved by the appropriate accrediting body of the American Optometric Association.

2.1.2 Pass the substantive and clinical examinations required by 2.2 of these regulations.

2.1.3 Complete the internship required by 24 Del.C. §2110 and Section 3 of these regulations. An individual is duly licensed after completing the internship requirement as well as all the other requirements in §2107 of this statute. (For reciprocal applicants, see Section 4 of these regulations.)

2.1.4 All applicants for therapeutic licensure must be CPR certified for both children and adults. All therapeutic optometrists must keep their CPR certification for both children and adults current.

2.1.5 Has not engaged in conduct that would

constitute grounds for disciplinary action, and has no unresolved disciplinary proceedings pending in this or any other jurisdiction. It shall be the responsibility of the candidate to submit to the Board a certified statement of good standing from each jurisdiction where he/she is currently or has been previously licensed.

2.2 Every candidate shall pass, at a score determined by the National Board of Examiners in Optometry, the substantive and clinical portions of the examination given by the National Board of Examiners in Optometry. The clinical examination given by the National Board of Examiners in Optometry may be taken as part of the National Board Examination or as a separate clinical skills and/or TMOD examination given by the National Board of Examiners in Optometry as the State Board shall designate.

3.0 INTERNSHIP

3.1 An internship is a course of study in which applicants receive part of their clinical training in a private practice setting under the supervision of a licensed optometrist or ophthalmologist. An active, licensed Optometrist or Ophthalmologist may act as a supervisor. Any applicant’s participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

3.1.1 A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

3.1.2 Each applicant who will be participating in the internship program must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin.

3.1.3 A letter must be received by the Board from the supervisor verifying the completion of the internship.

3.1.4 For purposes of this Section and 29 Del.C. §2110, the term “duration” shall be defined as “a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period.” No intern may practice on a temporary license beyond the duration of the internship.

3.2 Subject to the approval requirements stated above, a candidate’s internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

3.2.1 Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

3.2.2 Performs his optometric duties on a full-

time basis in a completely equipped eye clinic.

3.3 Full-time: minimum of 35 hours per week.

3.4 All supervisors must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No supervisor may be a supervisor for more than one intern, or student extern, at a time. Only one intern shall be permitted in any practice for any period of time.

3.5 All acts which constitute the practice of optometry under 24 Del.C. §2101(a) may be performed by the intern only under the following conditions:

3.5.1 The supervisor shall be on the premises and immediately available for supervision at all times;

3.5.2 All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

3.5.3 A supervisor shall at all times effectively supervise and direct the intern.

3.6 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 Del.C. §2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 Del.C. §2113(a)(7).

4.0 RECIPROCITY (~~ENDORSEMENT~~)

4.1 The Board shall waive the internship requirement for an applicant holding a valid license to practice optometry, issued by another jurisdiction, and who has practiced for a minimum of five years in such other jurisdiction with standards of licensure which are equal to or greater than those of 24 Del.C. Ch. 21 and grant a license by reciprocity to such applicant. The five years of practice experience must be obtained in states(s) with licensure standards at least equal to those of Delaware. The applicant shall contact the Healthcare Integrity Protection Data Bank/ National Practitioner Data Bank requesting that verification be sent to the Board regarding his/her licensure status. In addition, the applicant shall contact each jurisdiction where he/she currently is licensed, or has been previously licensed, or otherwise authorized to practice optometry, and request that a certified statement be provided to the Board stating whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved.

4.2 Applicants from jurisdictions which have the same basic qualifications for licensure as this State, but do not have essentially comparable or higher standards to qualify

for 'therapeutic' licensing, shall be required to meet the conditions of subsections (a) and (b), 24 Del.C. §2108.

~~4.3 "Standards" as used in this Section are defined in Rules 6.0 & 7.0 of these regulations.~~

4.3 ~~In addition,~~ The applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of Optometry for each the jurisdiction through which he/she is seeking reciprocity or claiming qualifying practice experience.

4.4 "Standards of licensure," as used in 24 Del.C. §2109, shall refer to the qualifications of applicants set forth at §2107.

4.5 The "standards to qualify for 'therapeutic' licensing," as used in 24 Del.C. §2109 with regard to therapeutic reciprocity, shall refer to the standards of diagnostic and therapeutic practice as set forth in 24 Del. C. §2101(b).

4.6 An applicant shall not be licensed by reciprocity as a Delaware therapeutically certified optometrist unless:

4.6.1 He/she demonstrates that the state in which he/she is therapeutically certified allows the use and prescription of diagnostic and therapeutic drugs which is at least equivalent to that permitted under a Delaware therapeutic optometrist license as set forth in §2101(b). OR

4.6.2 He/she has met the requirements of §2108(a) and (b) and Rule 11.0.

5.0 USE OF DIAGNOSTIC DRUG

5.1 Licensees who have been duly authorized by the Board may, for diagnostic purposes only, make use of the following classes of topical ophthalmic drugs: (1) anesthetics, (2) mydriatics, (3) cycloplegics, and (4) miotics; provided, however, that any such authorization by the Board shall not be construed as authorizing any licensee to dispense or issue a prescription for diagnostic drugs.

5.2 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

5.3 The provisions of Section 5.1 shall not preclude a licensee from using: ancillary diagnostic agents including, but not limited to dyes, schirmer strips, etc.

6.0 USE OF THERAPEUTIC DRUG

6.1 Therapeutically certified optometrists may use and/or prescribe the following pharmaceutical agents for the treatment of ocular diseases and conditions:

6.1.1 Topical and oral administration:

6.1.1.1 Antihistamines and decongestants

6.1.1.2 Antiglaucoma

6.1.1.3 Analgesics (non-controlled)

6.1.1.4 Antibiotics

6.1.2 Topical administration only:

6.1.2.1 Autonomics

6.1.2.2 Anesthetics

6.1.2.3 Anti-infectives, including antivirals and antiparasitics

6.1.2.4 Anti-inflammatories

6.2 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

7.0 MINIMUM STANDARDS OF PRACTICE

7.1 Equipment

7.1.1 Acuity chart

7.1.2 Ophthalmoscope

7.1.2.1 Direct

7.1.2.2 Indirect

7.1.3 Keratometer

7.1.4 Biomicroscope

7.1.5 Tonometer

7.1.6 Gonioscope

7.1.7 Access to Visual Field

7.1.8 Access to Retinal Camera

7.1.9 Phoropter

7.2 Examination and Treatment

7.2.1 General Examination:

7.2.1.1 Case history

7.2.1.2 Acuity measure

7.2.1.3 Internal tissue health evaluation

7.2.1.4 External tissue health evaluation

7.2.1.5 Refraction

7.2.1.6 Tonometry

7.2.1.7 Visual fields (in appropriate cases)

7.2.1.8 Retinal photos (in appropriate cases)

7.2.1.9 Treatment, recommendations and directions to the patients, including prescriptions

7.2.1.10 Name of attending optometrist

7.2.2 During a contact lens examination:

7.2.2.1 Assessment of corneal curvature

7.2.2.2 Acuity through the lens

7.2.2.3 Directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision

7.2.2.4 Name of attending optometrist

7.2.2.5 Assessment of contact lens fit

7.2.3 During a follow-up contact lens examination:

7.2.3.1 Assessment of fit of lens

7.2.3.2 Acuity through the lens

7.2.3.3 Name of attending optometrist

7.2.3.4 Ocular health assessment

7.3 A complete record of examinations and treatment shall be kept in a current manner.

8.0 ETHICS

8.1 It shall be the ideal, the resolve and the duty of all licensees to:

8.1.1 Keep the visual welfare of the patient uppermost at all times.

8.1.2 Promote in every possible way, better care of the visual needs of mankind.

8.1.3 Enhance continuously their educational and technical proficiency to the end that their patients shall receive the benefits of all acknowledged improvements in vision and eye care.

8.1.4 See that no person shall lack for visual care, regardless of his financial status.

8.1.5 Advise the patient whenever consultation with an optometric colleague or reference for other professional care seems advisable.

8.1.6 Hold in professional confidence all information concerning a patient and use such data only for the benefit of the patient.

8.1.7 Conduct themselves as exemplary citizens.

8.1.8 Maintain their offices and their practices in keeping with current professional standards of care.

8.1.9 Promote and maintain cordial and unselfish relations with members of their own profession and other professionals for the exchange of information to the advantage of mankind.

8.1.10 Maintain adequate records on each patient for a period of not less than five years from the date of the most recent service rendered.

8.2 A licensee must honor a patient's request to forward the patient's complete prescription and ophthalmic or contact lens specification to another licensed physician of medicine, osteopath, optometrist, or a nationally registered contact lens technician working under the direct supervision of an optometrist, ophthalmologist or osteopathic physician, if all financial obligations to the licensee have been satisfied. It shall be the obligation of a licensee to tender to a patient upon request his/her final prescription for ophthalmic lenses or contact lens(es) specification, if all financial obligations to the licensee have been satisfied. For purposes of this section, a final prescription or specification results when a patient is released to routine follow-up care. No licensee shall be required to tender a contact lens prescription beyond one (1) year from the date the contact lens(es) were dispensed.

8.3 It shall be considered unlawful for a licensee to delegate to a lay individual, whether an employee or not, any act or duty which would require, on the part of such individual, professional judgment. The fitting of contact lenses, tonometry, refraction, treatment of eye disease, low vision and vision therapy, etc. shall not be so delegated unless under the direct supervision of the licensee.

8.4 No licensee shall do anything inconsistent with the professional standards of the optometric and allied health professions.

8.5 No licensee shall use unethical, misleading or unprofessional advertising methods, including, but not

limited to: baiting patients to purchase materials in exchange for free or reduced fees for professional services.

8.6 No licensee when using the doctor title shall qualify it in any other way than by use of the word "optometrist". He/she may, however, when not using the prefix, use after his/her name the "O.D." degree designation, consistent with other provisions of 24 **Del.C.** Ch. 21.

8.7 No licensee shall practice in or on premises where any materials, other than those necessary to render his professional services, are dispensed to the public.

8.8 No licensee shall locate in a merchandising store or practice his profession among the public as the agent, employee or servant of, or in conjunction with either directly or indirectly, any merchandising firm, corporation, lay firm or unlicensed individual.

8.9 No licensee shall practice his profession in conjunction with, or as an agent or employee of an ophthalmic merchandising business (commonly known as "opticians") either directly or indirectly in any manner. Nor shall any licensee use any name other than the name recorded in the files of the State Board for his optometric registration and licensure.

8.10 Corporations, except those allowed under Chapter 6 of Title 8 of the Delaware Code, lay firms and unlicensed individuals are prohibited from the practice of optometry directly or indirectly and from employing, either directly or indirectly, registered and licensed optometrists to examine the eyes of their patients. Licensees so employed will be considered guilty of unprofessional conduct, and in violation of 24 **Del.C.** §2113(a)(3) and (6).

8.11 No licensee shall hold himself forth in such a way as to carry the slightest intimation of having superior qualifications or being superior to other optometrists, unless he is qualified by a specialty board approved by the State Board.

8.12 No licensee holding an official position in any optometric organization shall use such position for advertising purposes or for self-aggrandizement.

8.13 Since the law states that a certificate must be displayed in every office where the profession of optometry is practiced, and since no certificate for branch offices has previously been issued, the State Board shall issue branch office certificates with the words "Branch Office" thereon emblazoned under the registry number, with the certificate being a duplicate of that originally issued.

8.14 A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

9.0 HEARINGS

9.1 All complaints shall be referred to the Division of Professional Regulation for investigation and a contact person from the Board will be appointed at the next meeting.

9.2 Hearings are conducted in accordance with the Administrative Procedures Act.

10.0 CONTINUING EDUCATION REQUIREMENTS

10.1 All persons licensed to practice Optometry in the State of Delaware shall be required to acquire 12 hours of continuing education every two years. All therapeutic licensed optometrists shall be required to acquire an additional 12 hours of therapeutics and management of ocular disease and keep their CPR certification for both children and adults current. No practice management courses will be accepted.

10.2 These continuing optometric education requirements are necessary for licensure every two years.

10.3 Licensees will be required to comply before May 1 of odd numbered years.

10.4 It shall be the responsibility of the candidate for relicensure to submit to the appropriate State of Delaware agency evidence of his/her compliance with these requirements. The appropriate state agency shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the continuing education requirements stated herein, along with other fees and documents required. Failure to be notified by such agency shall not relieve licensee from this obligation.

10.5 Self-Reported Study

10.5.1 Non-therapeutic - Of the 12 hours biennial requirement for non-therapeutic licensees, a maximum of 2 hours may be fulfilled by self-reported study.

10.5.2 Therapeutic - Of the 24 hours biennial requirement for therapeutic licensees, a maximum of 4 hours may be fulfilled by self-reported study.

10.5.3 Self-reported study may include:

10.5.3.1 Reading of Optometric journals

10.5.3.2 Optometric tape journals

10.5.3.3 Optometric audiovisual material

10.5.3.4 Other materials given prior approval by the Board.

Proof of completion from the sponsoring agency is required for credit.

10.6 Any new licensee shall be required to complete continuing education equivalent to one hour for each month between the date of licensure and the biennial renewal date. The first twelve (12) hours of pro-rated continuing education must be in the treatment and management of ocular disease.

10.7 Continuing Education courses given by the following organizations will receive credit. Meetings of (Scientific Session Portion Only)

10.7.1 American Optometric Association

10.7.2 Delaware Optometric Association

10.7.3 American Academy of Optometry

10.7.4 Recognized state regional or national optometric societies

10.7.5 Schools and colleges of Optometry

10.7.6 Meetings of other organizations as may be approved by the Board.

10.7.7 COPE-approved courses (with the exception of Practice Management courses)

10.8 Failure to Comply. When the State Board of Examiners in Optometry deems someone to be deficient in continuing education requirements, the license will be revoked. In the event that any optometrist licensed in this State fails to meet continuing education requirements, his or her license shall be revoked, except when proven hardship makes compliance impossible. The Board shall reinstate such license upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

10.9 Licensure--Renewal

10.9.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

10.9.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee in addition to the prescribed renewal fee.

10.9.3 Any licensee who intends not to renew his/her license because he/she retired from practice or has ceased practice in the State of Delaware, shall so indicate such reason(s) on the renewal application. Failure to do so will result in the Board taking mandatory action to revoke the license.

10.10 Exemptions

An exemption may be granted to any optometrist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, etc.

11.0 THERAPEUTIC CERTIFICATION

11.1 The examination identified in 24 Del.C. §2108(b) is the national examination administered by the Association of Regulatory Boards of Optometry (ARBO) for treatment and management of ocular disease. A copy of the certificate representing passage of the examination must be submitted with the application for therapeutic licensure.

11.2 All applicants for therapeutic licensure must be

CPR certified for both children and adults. All optometrists must keep their CPR certification for both children and adults current.

11.3 For applicants currently licensed in Delaware and applicants for reciprocal licensure pursuant to the requirements of §2108, 40 hours of treatment and management of ocular disease training may be accumulated with a therapeutically certified optometrist, a medical doctor, or an osteopathic doctor. Proof of 40 hours of treatment and management of ocular disease training must be submitted in writing by the supervising doctor. ~~by letter.~~ If an applicant's supervisor is a therapeutically certified optometrist practicing in a state other than Delaware, proof of similar therapeutic practice standards ~~licensing requirements~~ in the other state must be submitted.

11.4 Applicants must have completed their forty (40) hours of clinical experience within twenty-four (24) months of their initial application for therapeutic licensure. No clinical experience older than 24 months (prior to application) will be accepted for therapeutic certification.

~~11.5 The same reciprocity rules apply for therapeutic licensing as for other optometry licensing.~~

11.5 All newly licensed optometrists shall be required to be therapeutically certified. Their six month internship should be done with a therapeutically certified optometrist, M.D. or D.O. However, if a therapeutically certified optometrist, M.D. or D.O. is not available, the intern may do an internship with a non-therapeutically certified optometrist, provided the intern complete an additional 100 hours of clinical experience in the treatment and management of ocular disease supervised by a therapeutically certified optometrist, M.D. or D.O. during their internship.

~~11.7 For applicants not currently licensed in Delaware (Refer to Reciprocity).~~

12.0 UNPROFESSIONAL CONDUCT

A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 Del.C. 10027)

The Harness Racing Commission proposes to amend certain rules. The following is a summary of the proposed rules:

1. Amend Rule 8.3.5.4 to clarify the time period for administration of lasix to horses and to delete the provision for removal of a horse from the Steward's List for multiple

violations of the Rule.

2. Amend Rule 7.6.14 to revise the Hubrail Rule to conform to the current use of pylons on the racetrack and to require that a driver who leaves the course must reenter as soon as possible.

3. Amend Rule 7.6.15 to clarify the rule requirements for use of the extended homestretch and the penalties for violation of the Rule.

4. Amend Rule 7.6.13 to provide that any driver involved in an objection or inquiry must immediately respond to an inquiry from the judges.

5. Amend Rule 3.2.8.3 to require that horses scratched for lameness or sickness must be on the Steward's List for seven days, instead of five days.

6. Amend Rule 7.6.6 to delete Rule 7.6.6.6 regarding use of a recall pole.

7. Amend Rule 6.3.2 to add new subsection 6.3.2.8 prohibiting a person from claiming more than one horse in the same race. Amend Rule 6.3.2 to add new subsection 6.3.2.9 to prohibit transfer of a claimed horse for a period of thirty days after the claim, except for entry in a claiming race.

8. Amend Rule 8.4.3.5.10 to revise the procedure for the use of split samples for carbon dioxide testing to provide that both samples would be sent to the Commission laboratory on an anonymous basis for testing.

The Commission proposes these amendments pursuant to 3 **Del.C.** §10027 and 29 **Del.C.** §10113. The Commission will consider the proposed rule changes at a public hearing on May 22, 2000 at 10:30 a.m. at Harrington Raceway, Harrington, DE. The Commission will receive written comments from the public until May 30, 2000. Copies of the proposed rules and current rules can be obtained from John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. Written comments can be sent to Mr. Wayne's attention at the Commission's Office.

1. AMEND Rule 8.3.5.4 to provide as follows:

8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined. ~~If a horse is late at the Lasix stall a second consecutive time, the horse will be scratched and removed from the Bleeder List, and placed on the Steward's List for ten (10) days.~~

2. AMEND Rule 7.6.14 to provide as follows:

7.6.14 Harness Race Track Without a Hubrail

7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons ~~hub rail~~ or other demarcation which constitutes the inside limits of the course, the offending horse ~~may shall~~ be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse's ~~or any portion of a~~ sulky to run over or go inside the pylons or other demarcation, which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

7.6.14.2 In the event a horse or part of a horse's sulky leaves the course for any reason, it shall be the driver's responsibility to take all reasonable steps to safely reenter the race course as soon as possible.

3. AMEND Rule 7.6.15 to provide as follows:

7.6.15 Extended Homestretch

7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.

7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:

7.6.15.2.1 ~~no horse shall pass on the extended inside lane except when entering the stretch for the final time; When entering or while going through the homestretch for the first time in a race, no horse shall use the expanded inside lane in an attempt to pass other horses or improve its position. Any horse, which does so shall be disqualified and placed last in the order of finish.~~

7.6.15.2.2 The lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane. ~~and~~ If, in the opinion of the judges, the lead horse changes course in the homestretch in an attempt to prevent a trailing horse from passing, said horse shall be placed accordingly.

7.6.15.2.3 Horses using the expanded inside lane during the homestretch drive for the finish of the race, open stretch must first have complete clearance of the pylons marking the inside boundary of the racecourse. Any horse or sulky running over one or more of the pylons ~~and/or~~ going ~~to~~ the inside of the pylons while attempting to use the expanded inside lane, may be to clear shall be disqualified or placed back one or more positions.

7.6.15.2.4 A horse may only be driven into the expanded homestretch lane for the purpose of passing another horse and may not be driven into the expanded homestretch lane for the purpose of blocking a trailing horse.

If, in the opinion of the judges, a horse is driven into the expanded homestretch lane for the purpose of blocking a trailing horse, the driver of the blocking horse may be fined and/or suspended and the horse may be placed accordingly.

4. AMEND Rule 7.6.13 to provide as follows:

7.6.13 Conduct of the Race

7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:

7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his or her horse back, or pull his/her horse out of its stride.

7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.

7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.

7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.

7.6.13.1.6 Carry another horse out.

7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.

7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his/her overall position.

7.6.13.1.9 Strike or hook wheels with another sulky.

7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.

7.6.13.1.11 Drive in a careless or reckless manner

7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he/she is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

7.6.13.1.13 Riding 'half-in' or 'half-out'.

7.6.13.1.14 Kicking a horse.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. Any driver who is involved in an objection or inquiry shall proceed

immediately to the paddock telephone to communicate with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.

7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.

7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.

7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.

7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his/her conduct and endangers the safety of horses or other drivers in a race, he/she shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.

7.6.13.1 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.

7.6.13.12 Shouting or other improper conduct in a race is forbidden.

7.6.13.13 Drivers shall keep both feet in the stirrups

during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

7.6.13.14 Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length.

Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply.

1 DE Reg. 923 (01/01/98)

2 DE Reg. 684 (10/01/98)

7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an association shall constitute a violation.

7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

7.6.13.18 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.

1 DE Reg. 923 (01/01/98)

7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.

7.6.13.20 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.20.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.20.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.20.3 Failure to lose ground while on a break.

7.6.13.20.4 If no violation has been committed, the horse shall not be set back unless a contending horse on his/her gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be

penalized.

7.6.13.20.5 Any horse making a break which causes interference to other horses may be placed behind all offended horses. If there has been no failure on the part of the driver of the breaking horse in complying with Rule 7.6.13.20, no fine or suspension shall be imposed on the driver as a consequence of the interference.

7.6.13.21 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

7.6.13.22 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

7.6.13.23 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

7.6.13.24 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

7.6.13.25 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the State Steward or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

7.6.13.26 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

5. AMEND Rule 3.2.8.3 to provide as follows:

3.2.8 Steward's List

3.2.8.1 The judges shall maintain a Steward's List of the horses which are ineligible to be entered in a race.

3.2.8.2 A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused. The owner or trainer shall be notified of such action and the reason shall be clearly stated. When any horse is placed on the Steward's List, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date

the horse was put on the Steward's List the reason and the date of removal if the horse has been removed.

1 DE Reg. 501 (11/01/97)

2 DE Reg. 1243 (01/01/99)

3.2.8.3 All horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and can not race for ~~five (5)~~ seven (7) days from the date of the scratched race. Entries will be accepted during this ~~five (5)~~ seven (7) day period for a race to be contested after the ~~fifth~~ seventh day.

Veterinarians may put a horse on the Steward's List for sickness or lameness for more than ~~five (5)~~ seven (7) if necessary. In that instance, the horse may not race until proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

2 DE.Reg. 1244 (01/01/99)

3.2.8.4 No Presiding Judge or other official at a fair meeting shall have the power to remove from the Steward's List and accept as an entry any horse which has been placed on a Steward's List and not subsequently removed therefrom for the reason that he/she is dangerous or an unmanageable horse. Such meetings may refuse declarations and/or entries on any horse that has been placed on the Steward's List and has not been removed therefrom.

3.2.8.5 No horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months.

3.2.8.6 The judges may put any horse on the Steward's List for performance when such horse shows a reversal of form or does not race near its own capabilities. Such horse shall qualify in a time comparable to its known capabilities from one to three times, at the discretion of the judges, before being allowed to start.

3.2.8.7 Any horse put on the Steward's List as unmanageable or dangerous must qualify in a satisfactory manner for the judges at least two times.

3.2.8.8 The judges may put any horse on the Steward's List for being noncompetitive or unfit to race at the meeting.

3.2.8.9 The judges may place a horse on the Steward's List when there exists a question as to the exact identification, ownership or management of said horse.

3.2.8.10 A horse which has been placed on the Steward's List because of questions as to the exact identification or ownership of said horse, may be removed from the Steward's List when, in the opinion of the judges, proof of exact identification and/or ownership has been established.

3.2.8.11 A horse may not be released from the Steward's List without the permission of the judges.

6. AMEND Rule 7.6.6 to delete subsection 7.6.6.6 as follows:

7.6.6 Recall Rules

7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his/her discretion to close the wings of the gate.

7.6.6.2 There shall be no recall after the word "go" has been give unless there is a mechanical failure of the starting gate.

7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse after the recall point is passed.

7.6.6.4 In the event a horse causes two recalls, it may be an automatic ruling of the judges that the offending horse be scratched.

7.6.6.5 The starter may sound a recall for the following reasons:

7.6.6.5.1 A horse scores ahead of the gate;

7.6.6.5.2 There is interference;

7.6.6.6.3 A horse has broken equipment;

7.6.6.6.4 A horse falls before the word "go" is given; or

7.6.6.6.5 A mechanical failure of the starting gate.

~~7.6.6.6 There shall be a recall pole placed one eighth of a mile before the starting point, before or at which point, at the discretion of the starter, there may be a recall for a breaking horse or horses not up to the gate. When the recall pole is passed, there shall be no recall for a breaking horse or a horse not up to the gate except as provided in 7.6.6.5.1-7.6.6.6.5 above. Horses not up to the gate in position due to the fault of the driver may result in the driver being penalized by the starter.~~

7.6.6.7 A fine and/or suspension may be applied to any driver for:

7.6.6.7.1 Delaying the start;

7.6.6.7.2 Failure to obey the starter's instructions

7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;

7.6.6.7.4 Coming to the starting gate out of position;

7.6.6.7.5 Crossing over before reaching the starting point;

7.6.6.7.6 Interference with another driver during the start; or

7.6.6.7.7 Failure to come up into position.

7. AMEND Rule 6.3.2 to add new subsections 6.3.2.8 and 6.3.2.9 to provide as follows:

6.3.2 Prohibition on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

1 DE Reg. 503 (01/11/97)

6.3.2.8 No person shall claim more than one horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

8. AMEND Rule 8.4.3.5.10 to provide as follows:

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and

remain there until released by the Commission veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness

8.4.3.5.2 The Commission veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "

primary” sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The “secondary” sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the “primary” sample delivered contains no prohibited drug, the “secondary” sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the “primary” sample and will be tested as other “primary” samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the “primary” and one for the “secondary” sample.

8.4.3.5.10 In the event of an initial finding of a prohibited drug or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the “secondary” sample provided however, that ~~the procedure for testing the “secondary sample” shall not apply to, and there shall be no right to such testing of a “secondary sample” with respect to a finding of a prohibited level of total carbon dioxide in a submitted sample with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the “secondary sample” unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a “secondary sample” shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.~~

8.4.3.5.10.1 If testing of the “secondary” sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission

after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the “secondary” samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the “secondary” sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

1 DE Reg. 505 (11/01/97)

THOROUGHBRED RACING COMMISSION
Statutory Authority: 3 Delaware Code,
Section 10103 (3 Del.C. 10103)

The Delaware Thoroughbred Racing Commission proposes several rule amendments to the Rules of Racing of the Delaware Thoroughbred Racing Commission. The Commission proposes the rules pursuant to 3 Del.C. §10103 and 29 Del.C. §10118. Although the proposal contains

many proposed changes, the changes for the most part are stylistic changes designed to clarify the role of the Commission and the racetrack in the racing operations. The following is a brief summary of the proposed rules:

1. Amend **Rule 2.01 Conditions precedent to registration or issuance of authorization or permit**. The proposed rule would clarify that licensees must comply with all rulings of the Commission, and further clarify that the Commission, not the licensed racetrack, is responsible to maintain fingerprint information on licensees.

2. Amend **Rule 2.02 (Permits, Registrations, and Authorizations) By Whom Required**. The proposed rule would clarify that the Commission, not the licensed racetrack, issues permits or authorizations for licensees.

3. Amend **Rule 2.03 Registra**. The amendment would delete a provision requiring the registrar to collect license fees and approve license applications.

4. Amend **Rule 2.04 Standards for Granting Permits, etc., to Participants in Racing**. The proposed amendment would clarify that the Commission, not the licensed racetrack or the registrar, grants registrations and authorizations for racing participants.

5. Amend **Rule 2.05 Grounds for Refusal, Suspension, or Revocation of a Permit**. The proposed amendment would provide that the Commission may refuse to license or suspend or revoke licenses. Rule 2.05(c) as amended would allow for disciplinary action against a licensee who falsified a Commission application. As amended, Rule 2.05(d) would delete the provision for disciplinary action against a licensee or applicant for failure to comply with orders or rulings of the racetrack. The amended Rules 2.05(r) and 2.05(u) would delete the provision for disciplinary action against a licensee or applicant based on improper activity in the opinion of the licensee. Rule 2.05(t) as amended would clarify that the Commission makes the decision to take licensure action based on reports from law enforcement authorities. Rule 2.05(v) would permit action against a licensee for failure to submit to photographs or fingerprints taken by the Commission.

6. Amend **Rule 2.06-Permit Application for Participants in Racing**. Rule 2.06 as amended would clarify that the Commission is the agency to issue applications for permits. Rule 2.06(d) would delete the provision that the licensed racetrack acts on license applications. Rule 2.06(g) would be amended to permit the Commission to charge license fees as authorized under 3 Del.C. §10131.

7. Amend **Rule 2.07 Registrar**. Rule 2.07 would be revised to provide that the Commission, not the registrar or licensed racetrack reviews license applications.

8. Amend **Rule 2.08 Term of Authorizatio**. As amended, Rule 2.08 would clarify that the Commission

grants permits as authorized under 3 Del. Chapter 101.

9. Amend **Rule 2.09 Possession of identification card required**. Rule 2.09 as amended would provide that the Commission issues authorizations or permits for participants to be present on the racetrack grounds.

10. Amend **Rule 3.02 Appointment of Stewards**. As amended, Rule 3.02 would clarify that the Commission is responsible for the hiring of the Stewards.

11. Amend **Rule 3.03 General Powers of Stewards**. As amended, Rule 3.03(d)(e) would provide that the Commission may instruct the Stewards to review license applications, licenses, registration certificates, and related papers. Rule 3.03(c) would be amended to state that the Veterinarian is the Commission's Veterinarian.

12. Amend **Rule 4.01 Racing Officials**. Rule 4.01 would be amended to clarify that the Veterinarian is not appointed as a racing official by the licensed racetrack.

13. Amend **Rule 5.32 Commission's Licensee's Veterinarian**. Rule 5.32 would be amended that the Veterinarian is employed by the Commission.

14. Amend **Rule 6.01 Registration Required**. As amended, Rule 6.01 would provide that owners must obtain a registration from the Commission.

15. Amend **Rule 6.02 Requirements for Owner's Registration**. Rule 6.02 would be amended to clarify that the Commission may deny, suspend, or revoke an Owner's registration.

16. Amend **Rule 6.04 Joint Ownership**. Rule 6.04 as amended would clarify that the Commission may deny, suspend, or revoke the registration of a joint owner.

17. Amend **Rule 7.01 (Trainers) Registration Required**. Rule 7.01 would clarify that the Commission issues registrations to trainers.

18. Amend **Rule 7.02 Requirements for Trainer's Registration**. Rule 7.02 as amended would clarify that the Commission has the authority to deny, suspend, or revoke trainer registrations.

19. Amend **Rule 7.03 (Trainers) Duties and Responsibilities**. Rule 7.03 would be amended to clarify that the track veterinarian is employed by the Commission.

20. Amend **Rule 7.06 Assistant Trainer**. Rule 7.06 would be amended to clarify that the Commission licenses assistant trainers.

21. Amend **Rule 8.01 Probationary Mount**. Rule 8.01 as amended would provide that the Commission issues permits for jockeys or apprentice jockeys.

22. Amend **Rule 9.01 Agency Permitted**. Rule 9.01 as amended would provide that the Commission issues registrations for owners or jockeys.

23. Amend **Rule 9.03 Termination of Agency**. Rule 9.03 as amended would require agents to notify the Commission prior to termination of the agency.

24. Amend **Rule 9.04 Acts by Authorized Agent**. Rule 9.04 would be amended to clarify that the Commission

issues permits for Authorized Agents.

25. Amend **Rule 9.05 Riding Engagements**. As amended, Rule 9.05 would provide that the Commission issues permits for persons making riding engagements for a rider.

26. Amend **Rule 10.03 Denerving**. Rule 10.03 would be amended to provide that the Commission Veterinarian is responsible for approving horses that have had a posterior digital neurectomy.

27. Amend **Rule 10.04 Bleeders** and amend **Rule 10.07 Removal from Licensee's Grounds** to clarify that the track veterinarian is employed by the Commission.

29. Amend **Rule 11.02 Procedure for Making Entries** to clarify that the track veterinarian is employed by the Commission.

30. Amend **Rule 15.02 Bleeder Medication, Rule 15.04-Reports of Administration, Rule 15.05 Report Prior to Race of Cessation or Reduction of Medication, Rule 15.06 Bettors' Safeguard, and Rule 15.08 Detention Area**. These amendments would clarify that the track veterinarian is employed by the Commission, and not the licensed racetrack.

The Commission will receive written public comments from May 1, 2000 through May 30, 2000. The Commission will hold a public hearing on May 23, 2000 at 10:00 a.m at Delaware Park, Stanton, DE. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19910. Copies of the proposed rules can be obtained from the Commission office at the above address.

PART 2 -- PERMITS, REGISTRATIONS AND AUTHORIZATIONS

2.01 Conditions precedent to registration or issuance of authorization or permit.

Thoroughbred racing and participation therein within Delaware are privileges, not rights, which are subject to the conditions and requirements imposed by these Rules. Acceptance of an authorization, registration or permit as provided for by these Rules shall constitute the recipient's consent and agreement to the requirements of these Rules, and failure to comply therewith shall be grounds for immediate voidance or revocation of such authorization, registration or permit. Registrants and Permittees shall abide by all rulings and decisions of the Commission, the Licensee and/or of the Stewards, and all such rulings and decisions shall remain in force unless and until reversed or modified by the Commission upon proper appeal thereto, or a court of competent jurisdiction.

All rulings and decisions of the Stewards may be appealed to the Commission upon deposit of an appropriate sum to defray all costs attendant.

By applying for and/or accepting any authorization, registration or permit provided for by these Rules, the Permittee or Registrant consents: (1) to a search by the Licensee and/or by the Commission, or their respective representatives, of his person and any property in his possession, such property being restricted to that on Licensee's grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes and containers of any sort; and (2) to seizure of any object which may be evidence indicating a violation of these Rules; and (3) to having his photograph and fingerprints taken and retained on file by Licensee the Commission and/or any other security or investigative agency or entity it may select. During the conduct of an investigation, every Permittee or Registrant shall respond correctly under oath to the best of his knowledge to all questions asked by the Commission, the Licensee, the Stewards or their respective representatives, pertaining to racing matters.

2.02 By Whom Required:

No person shall participate in Thoroughbred Racing in Delaware at any Licensee's racetrack as a horse Owner, Trainer, Assistant Trainer, Authorized Agent, Jockey, Apprentice Jockey, Jockey's Agent, Stable Agent, Stable Employee, Racing Official, Licensee's employee, or employee of a person or concern contracting with the Licensee to provide a service or commodity and which employment requires his presence on Licensee's grounds during a race meeting, or Veterinarian, Farrier, Dental Technician or supplier of food, tack, medication or horse feed, without first securing such authorization or permit therefor from the Commission Licensee in such form, upon such conditions, and for such fees or charges, as it from time to time, with the Commission's approval, may require.

2.03 Registrar:

The Licensee is authorized, with the approval of the Commission, to employ a Registrar who shall be responsible for processing applications for authorizations, permits, and registrations of all persons for whom such is required by the preceding section. ~~He also shall be responsible for collecting all requisite fees and charges therefor. All such applications received by the Registrar and granted by him shall be subject to reversal by the Commission for any reason it might deem necessary or appropriate.~~

A person may serve concurrently as Registrar and as a Steward. The Registrar and his assistants shall:

(a) Be present on Licensee's grounds prior to the opening of a race meeting, and during the meeting, to accept such applications and registrations, and shall maintain an office on Licensee's grounds for such purpose.

(b) File reports to the Commission respecting such applications with accountings of fees received therefor, as

and when required by the Commission.

(c) Be responsible for arranging the photographing and fingerprinting of all such applicants for whom Licensee requires such.

2.04 Standards for Granting Permits, etc., to Participants in Racing:

The Commission Licensee, ~~by its Registrar~~, may allow registration or issue an authorization or permit to any person who applies for same to participate in Thoroughbred Racing at Licensee's racetrack in Delaware as a horse Owner, Trainer, Assistant Trainer, Authorized Agent, Jockey, Apprentice Jockey, Jockey's Agent, Stable Agent, Stable Employee, Racing Official, Licensee's employee, employee of a person or concern contracting with the Licensee to provide a service or commodity and which requires his presence on Licensee's grounds during a race meeting, or Veterinarian, Farrier, Dental Technician, or supplier of food, tack, medication, or horse feed, if the Commission Licensee, ~~by its Registrar~~, finds that the financial responsibility, age, experience, reputation, competence, and/or fitness of the applicant to perform the activity so registered or permitted by an authorization or permit, are consistent with the best interests of racing and maintenance of the honesty, integrity and high quality it heretofore has enjoyed in Delaware.

2.05 Grounds for Refusal, Suspension, or Revocation of a Permit, etc.:

The Commission Licensee in its discretion, ~~by its Registrar~~, may refuse to register or to issue an authorization or permit to an applicant, or may suspend or revoke a registration, permit, or authorization previously issued, or order disciplinary measures, on the following grounds:

(a) Denial of a license, permit, authorization or registration to an applicant, or suspension or revocation of such, in another racing jurisdiction at any previous time;

(b) Conviction of a crime or violation of any narcotic regulation, or association with any person who has been so convicted;

(c) Falsification, misrepresentation, or omission of required information in the application submitted to the Commission Licensee; failure to disclose to the Licensee complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Thoroughbreds or Arabians;

(d) Failure to comply with any order or ruling of the Commission, ~~the Licensee~~, Stewards, or Racing Official pertaining to a racing matter;

(e) Ownership of any interest in, or participating by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person ever so engaged in such activity;

(f) Person less than 16 years of age;

(g) Person unqualified by experience or competence to perform the activity or hold the status for which registration, permit, or authorization is sought;

(h) Intoxication, use of profanity, fighting, or any conduct of a disorderly nature, on Licensee's grounds;

(i) Employment or harboring of unauthorized persons required by these Rules to register or have a permit or authorization;

(j) Discontinuance of or ineligibility for activity for which registration, permit, or authorization was issued;

(k) Possession on Licensee's grounds, without written permission therefor from the Commission, the Licensee, or the Stewards, of:

(1) Firearms;

(2) Battery, or buzzer, or electrical device, or other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;

(l) Possession on Licensee's grounds by a person other than a licensed Veterinarian of:

(1) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(2) Narcotics, or medication, or drug, or substance which could be used to alter the speed of a horse in a race.

(m) Use of profane, abusive or insulting language to or interference with a Commissioner, member of the Commission staff, or Racing Official, while such persons are in the discharge of their duties;

(n) Cruelty to a horse or neglect of a horse entrusted to a permittee's care;

(o) Offering, promising, giving, accepting or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the Stewards;

(p) Causing, or attempting to cause, or participation in any way in any attempt to cause the pre-arrangement of a race result, or failure to report knowledge of same immediately to the Stewards;

(q) Entering, or aiding or abetting the entering of, a horse ineligible or unqualified for the race entered;

(r) Drug addiction, public drunkenness, financial irresponsibility or failure to pay debts when due, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, past instance of lying, cheating, or stealing, or involvement in a subject of public notice as involved in any activity which, ~~in the opinion of the Licensee~~, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;

(s) Violation of any rule of the Commission, or aiding or abetting any person in the violation of any such rule;

(t) Unfavorable report, on any of the grounds hereinbefore stated, by recognized law enforcement

authorities, the Licensee's security director or his designee, inspection bureaus, credit reporting companies, courts or like organizations upon whom the Commission Licensee is authorized to rely if it chooses in any given cause to do so;

Rule 2.05(t) adopted 7/2/96

(u) Past or contemplated conduct or utterance which, ~~in Licensee's or its Registrar's judgment or opinion,~~ does or may adversely affect, whether intentionally or unintentionally, and whether in fact or only seemingly, the public's confidence in the reputation Thoroughbred racing heretofore has enjoyed in Delaware for stringent adherence to uncompromising standards of honesty, integrity and propriety;

(v) Failure to submit to having his photograph and fingerprints taken and maintained by the Commission or the Licensee.

2.06 Permit Application for Participants in Racing:

Any person required to register or have an authorization or permit by Rule 2.02 who desires to participate in Thoroughbred Racing and/or Arabian Racing in Delaware may apply to the Commission Licensee for registration, authorization or permit to participate in racing at Licensee's racetrack. Such application shall be made in writing on application forms prescribed by the Licensee and approved by the Commission and filed at the Licensee's general office or with the Licensee's Registrar on or after January 2 of the calendar year in which the registration, permit, or authorization is to be in force, but not later than 24 hours after applicant has arrived on Licensee's grounds.

All owners and trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses. All concessionaires shall carry workmen's compensation covering all their employees.

(a) Applications from persons not previously registered or granted an authorization or permit at Licensee's racetrack shall include the names of two reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the permit.

(b) Applications from persons whose age is not readily ascertainable by the Licensee or its Registrar shall be accompanied by an attested copy of birth certificate or work permit showing applicant is 16 years of age or older.

(c) Fingerprint identification, as well as a photograph, will be required of all registrants and permittees unless waived by the Licensee (e.g., absentee owners and casual delivery personnel who do not enter the stable area).

(d) Applications from persons, corporations, partnerships, lessees, or other legal entities involving more than one individual person desiring to race horses at Licensee's racetrack in Delaware shall, in addition to

designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control, directly or indirectly, as a stockholder, syndicate participant, partner, or otherwise, a present or reversionary interest in such horses. No application shall be acted upon by the Licensee until it is satisfied a full disclosure has been made.

(e) Applications from persons desiring to treat, or prescribe for, or attend any horse on Licensee's grounds as a practicing Veterinarian, shall be accompanied by evidence that such person is currently licensed as a Veterinarian by the State of Delaware. An accredited practicing Veterinarian not holding a permit or authorization from the Licensee or a license from the State of Delaware, however, may with permission of the Stewards in an emergency be called in as a consultant, or to serve as a Veterinarian for one horse on a temporary basis, and shall not thereby be considered as participating in racing in this State.

(f) Applications from persons desiring to treat, or prescribe for, or attend any horse on Licensee's grounds as a Dental Technician shall be accompanied by the name of a licensed Veterinarian who will attest to the technical competence of such applicant and under whose sponsorship and direction such applicant will work on Licensee's grounds.

(g) As a condition precedent to the registration or issuance of any permit or authorization required of participants in racing by these Rules, the Commission Licensee or its Registrar on its behalf shall be entitled to charge and collect, and each applicant shall be required to pay, an annual fee in such amount as permitted by 3 Del. C. chapter 101 as from time to time shall be approved by the Commission for each activity or status for which applicant seeks registration or the issuance of a permit or authorization.

~~All fees so collected by the Licensee or its Registrar on its behalf may be retained by Licensee, as its own funds, to defray its costs and expenses in processing and administering the registrations, permits and authorizations required by these Rules for the purpose of protecting and maintaining the integrity and good reputation of Thoroughbred Racing conducted in Delaware.~~

The Commission, pursuant to 3 Del.C. §10131, shall have the power to impose license fees for those participating in a racing meet. The license fees for participants in a racing meet, if imposed by the Commission, shall be payable to the Commission as follows:

(1) \$50 for all owners and all trainers.

(2) \$30 for all veterinarians, farriers, jockeys, apprentice jockeys, jockey agents, and assistant trainers.

(3) \$15 for all licensee vendors and vendor employees.

(4) ~~\$5 for all stable employees and association employees.~~

~~Activities for which such fees may be charged and collected may include the following categories:~~

~~1. Owner registration, Stable Name, Partnerships, and annual color registration;~~

~~2. Trainer, Assistant Trainer, Authorized Agent, Jockey, Apprentice Jockey, or Jockey's agent registration or authorization;~~

~~3. Veterinarian, Dental Technician, Assistant Trainer, Farrier, or Apprentice Farrier authorization;~~

~~4. Stable Agent, Stable Employee authorization (foreman, exercise boy, groom, hotwalker, watchman or pony boy);~~

~~5. Stable area Supplier authorization (suppliers of horse feed, tack, medications or food vendors);~~

~~6. Racing Department Employee authorization, Steward, Racing Secretary, Assistant Racing Secretary, Director of Racing, Starter and Assistant Starter, Paddock Judge, Patrol Judge, Placing Judge, Timer, Veterinarian, Chemist, Security Personnel, testing laboratory employee, Horse Identifier, Valet, jockey room Custodian, Clerk of Scales, Entry Clerk, photo finish operator, film patrol or video tape operator and projectionist, Flagman or Outrider;~~

~~7. Mutuel Department employee authorization, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizer employee;~~

~~8. Occupational authorization, Admission Department Manager and employees; concessions manager and employees; parking manager and employees; Security Department including police chief, detectives, policemen, watchmen, firemen, ambulance drivers and attendants; track superintendent, groundsmen, mechanics, carpenters; Maintenance Department Manager and employees; all other persons employed by the Licensee or employed by a person or concern contracting with the Licensee to provide a service or commodity and which employment requires their presence on Licensee's grounds during a race meeting;~~

~~9. Temporary occupational authorization for persons to be employed for ten days or less during a calendar year.~~

Rule 2.06 revised 7/2/96.

2.07 Registrar:

~~The Commission Licensee or its Registrar shall review all registrations, authorizations and permits subject to such security check and other investigation in appropriate instances as it may deem necessary or desirable, and may issue to a permit applicant a temporary authorization or permit to participate in the activity for which application is made pending further processing, investigation, and final~~

~~action on such application subsequently.~~

2.08 Term of Authorization:

~~Registrations, authorizations and permits issued by the Commission Licensee or its Registrar hereunder for participants in Thoroughbred Racing at its racetrack shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by said Licensee during such calendar year, unless sooner suspended, revoked or voided, or otherwise permitted by 3 Del.C. chap. 101. The Commission Licensee or its registrar may renew any authorization or permit and any such renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the holder thereof.~~

~~The validity of a registration, permit or authorization does not preclude or infringe upon the common law and absolute right of any Licensee in Delaware, without necessity for giving reason or excuse, to eject or exclude any person from its premises at any time.~~

2.09 Possession of identification card required:

~~No person required by these Rules to be registered by, or to have an authorization or permit from the Commission Licensee, may participate in any activity for which such is required on Licensee's grounds during a race meeting without having been issued an identification card containing his or her photograph which shall evidence such authorization and having the same in his or her possession.~~

~~With respect to Owners, or in special cases with respect to others, Licensee may waive this requirement. Also, see Rule 6.01.~~

PART 3 -- STEWARDS

3.02 Appointment of Stewards:

~~There shall be three Stewards at each race meeting, each of whom shall be appointed by the Licensee, subject to the approval of the Commission. Names of the Licensee's appointments for Stewards shall be submitted for approval to the Commission as early as possible, but not later than 30 days before commencement of Licensee's race meeting except for good cause. If required by the Commission, biographical data setting out the experience and qualifications of the nominees shall be provided to the Commission by the Licensee. The Licensee shall submit successive nominees until three persons are approved by the Commission as qualified to serve as Stewards. No Steward shall serve until approved by the Commission.~~

~~(a) Stewards shall serve from one minute after midnight on the day before the first racing day until one minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race~~

meeting which is not settled at the conclusion of the race meeting, then the power of the Stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission;

(b) ~~With the approval of the Commission,~~ Stewards may be replaced by the Commission Licensee at any time for failure to perform their duties properly and diligently;

(c) In the event that during a racing meet a Steward becomes ill, resigns, or is unable to serve for any reason, then the remaining Stewards, after obtaining approval of the Commission Licensee, shall nominate a successor or temporary Steward to the Commission for approval. In emergencies, a single Commissioner by telephone may approve appointment of a successor Steward.

3.03 General Powers of the Steward

The Stewards shall exercise immediate supervision, control and regulation of racing at the race meeting for which they are appointed. By way of illustration and without in any way limiting them, the powers of the Stewards shall include:

(a) Authority over all horses and all persons (except members of the Commission and its representatives, and except Licensee's management personnel and staff) on Licensee's grounds during a race meeting as to all matters relating to racing;

(b) To determine all questions, disputes, protests, complaints, or objections concerning racing (as distinguished from Licensee's business operations and affairs) which arise during a race meeting, and to enforce such determinations. All three Stewards shall be on Licensee's grounds before post time for the first race until conclusion of the last race. Except for good cause, all three Stewards shall be present in the Stewards' stand during the running of each race;

(c) It is preferred but not required that at least one Steward, or a designated representative of the Stewards, be present in the paddock at least 20 minutes before each race and remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and to inspect, with the Paddock Judge and Commission's Licensee's Veterinarian, all horses for fitness;

(d) When requested by the Commission Licensee ~~or its Registrar~~, to review all applications for registrations or permits to participate in racing, and, if requested by Licensee ~~or~~ by the Commission, to administer, or cause to be administered by technically qualified persons, standard examinations to all first-time applicants to be registered as or receive a permit to be a Trainer, Jockey, Apprentice Jockey, Veterinarian, Dental Technician, or Farrier, and, when requested, make recommendations ~~to the Licensee~~ as to the qualifications of all applicants for registrations or permits to participate in racing;

(e) When requested by the Commission Licensee ~~or its~~

~~Registrar~~, to review all licenses, registration certificates, and all contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, Jockey and Apprentice Jockey contracts, appointments of agents, adoptions of racing colors or stable name, and advise upon the eligibility and appropriateness thereof for participation in racing in Delaware;

(f) To call for proof of eligibility of a horse or person to participate in a race if such is in question, and in the absence of sufficient proof to establish eligibility, the Stewards may rule such horse or person ineligible;

(g) To review stall applications and advise Licensee of undesirable persons, if any, among Owners and Trainers applying for stalls, and provide the Licensee with information pertaining to such undesirable persons;

(h) To supervise the taking of entries and receive all declarations and scratches, and determine all questions arising and pertaining to same. The Stewards may in their discretion refuse the entry of any horse by any person or refuse to permit a declaration or scratch, or may limit entries in any way. Upon suspicion of fraud or misconduct, the Stewards may excuse a horse or replace any Jockey or Trainer, or Racing Official other than a Steward;

(i) All other powers enumerated in these Rules, together with such other powers as are necessary to promote and maintain stringent standards for honesty, integrity, and propriety for Thoroughbred Racing in Delaware.

PART 4 -- RACING OFFICIALS

4.01 Racing Officials

The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians, and such other employees as it deems necessary, consistent with the purposes of this chapter. The Commission, for the purpose of maintaining the integrity and honesty in racing, shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to perform those duties.

Persons appointed by the Licensee to serve as Racing Officials during a race meeting must first be approved by the Commission, shall serve only so long as approved by the Commission, and shall be under the supervision of the Stewards. For purposes of these Rules, Racing Officials shall include those persons serving as Steward, Racing Secretary, Assistant Racing Secretary, Clerk of the Scales, Paddock Judge, Starter, Patrol Judge, Placing Judge, Timer, Identifier ~~and Veterinarian~~.

(a) No person while serving as a Racing Official shall, directly or indirectly, own a beneficial interest in a Thoroughbred, or Jockey contract, or Licensee under his supervision; nor shall he cause to be sold, for himself or another, any Thoroughbred under his supervision; nor shall he wager on any race under his supervision; nor shall he

write or solicit horse insurance or have any monetary interest in any business which seeks the patronage of horsemen or racing associates as such. For the purposes of the above, the following employees shall also be deemed Racing Officials: Assistant Starter, Jockey Room Custodian, Jockey Room Employees, Valets, Outriders.

No person shall be appointed to or hold any such office or position who holds any official relation to any person, association, or corporation engaged in or conducting thoroughbred racing within this state. No Commissioner, racing official, steward, or judge whose duty it is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission. All persons appointed under 3 Del. C. §10107(a-c) shall serve at the pleasure of the Commission and are to be paid a reasonable compensation.

(b) Racing Officials serving in the capacity of Stewards, Placing and/or Patrol Judges, Clerk of Scales, Starter and Horse Identifier shall have good vision and an ability to distinguish colors correctly.

(c) Any Racing Official who desires to leave his employment during the race meeting must first obtain permission from the Commission; in the event a vacancy occurs among Racing Officials other than Stewards, the Licensee shall promptly appoint a successor, subject to approval of the Commission; in the event the Licensee does not appoint a successor in time to permit the orderly conduct of racing, then the Stewards shall immediately appoint a temporary successor.

PART 5 -- LICENSEES

5.32 Commission's Licensee's Veterinarian:

~~The Commission will Each Licensee shall~~ employ a graduate Veterinarian, licensed in Delaware, experienced in equine medicine and practice who, aided by such Assistant Veterinarians possessing like qualifications ~~as Licensee may employ~~, shall be responsible for inspecting all horses entered and advising upon their racing soundness. Such Veterinarian also shall maintain and post in the Racing Secretary's office a Veterinarian's list of horses ineligible to race because of sickness or unsoundness. Additionally, he shall supervise the following: control of communicable equine diseases; insect control; sanitary conditions in the stable area; and cruel and inhumane treatment of horses, etc.

(a) The Commission's Licensee's Veterinarian shall be attendant on the Stewards and the Racing Secretary at scratch time each day, shall examine such horses as such Racing Officials may request, and shall make reports to such Racing Officials as promptly as possible;

(b) The Commission's Licensee's Veterinarian also shall be responsible for inspecting every horse entered on the day of the race for which such horse is entered. Such inspection shall be for physical fitness, general condition and

for any noticeable unsoundness or peculiarities that may affect the racing condition of the horse, or be considered for the scratch of a horse on a muddy or sloppy track. Such pre-race examinations shall be recorded on a Health Record for every starter at the race meeting.

(c) The Commission's Licensee's Veterinarian shall be present in the paddock for saddling, shall accompany each field to the starting post, and shall observe all horses after the finish of each race. If, in his opinion, a horse suffers an injury while in the paddock, during the post parade, or at the starting gate, which shall render such horse unfit to race, he shall recommend to the Stewards that the horse be excused and placed on the Veterinarian's List. All horses requested to be scratched for physical reasons after scratch time shall be inspected by the Commission's Licensee's Veterinarian who shall report the condition of such horses to the Stewards.

(d) No Commission's Licensee's Veterinarian during his employment ~~by a Licensee~~ shall be permitted to engage in private veterinary practice involving Thoroughbreds, nor be employed by or receive any compensation directly or indirectly from any licensed Owner or Trainer, nor sell or buy, for himself or another, any Thoroughbred, nor place any wager in any manner on any race run at Licensee's premises, nor sell any drug supplies, nor sell horse insurance, nor be licensed to participate in racing in any other capacity.

PART 6 -- OWNERS

6.01 Registration Required:

No horse may be entered or raced in Delaware unless the Owner or each of the part Owners has been granted a current Owner's registration by ~~the Commission Licensee or its Registrar~~, except that for good cause shown, a temporary registration may be issued which will be valid for entering and racing pending administrative processing and final action by the Commission Licensee or its Registrar on such Owner's registration application, but in no event shall such temporary registration be considered valid longer than two weeks subsequent to the date such registration application was submitted.

6.02 Requirements for Owner's Registration:

In addition to satisfying the requirements applicable to Permittee, et al., imposed by Part 2 of these Rules, in order to be eligible for registration as an Owner, a person also:

(a) Must be an individual 18 years of age or older.

(b) All Owners and Trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses.

(c) Must own or have under lease a horse eligible to race and be prepared to prove such upon call of the

Stewards.

(d) Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds owned and trained by others.

1. ~~The Commission or its designee, Licensee, or its Registrar,~~ may deny, suspend or revoke an Owner's registration for the spouse, or any member of the immediate family or household, of a person ineligible to be registered as an Owner, unless there is a showing by the applicant or registered Owner, and the ~~Commission Licensee or its Registrar~~ so finds, that his participation in racing as an Owner will in no way circumvent the intent of this Rule by permitting a person, under the control or direction of a person ineligible for an Owner's registration, to serve in effect as the alter ego of such ineligible person.

2. A registered Owner or Trainer may personally serve as a Farrier or Jockey for horses he owns or are registered in his care, provided he has received from the Stewards a certification of his fitness as a competent Farrier or Jockey.

6.04 Joint Ownership:

No more than four individual persons may be registered as Owners of a single horse.

(a) In the event more than four individual persons own interests in a single horse, through a partnership, corporation, syndication or other joint venture, then such individual persons may designate in writing a member of the partnership, corporation, syndicate or joint venture to represent the entire ownership of and be responsible for such horse as the registered Owner thereof.

(b) Such agreement or lease shall accompany the application for an Owner's registration. Each person designated as representing the entire ownership of a horse must be registered.

(c) ~~The Commission Licensee or its Registrar~~ may deny, suspend or revoke the registration of any Owner whose ownership of a horse is qualified or limited in part by rights or interests in or to such horse held or controlled by any other individual person or persons ineligible to be registered as an Owner thereof.

PART 7 -- TRAINER

7.01 Registration Required:

No horse may be raced in this State unless the Trainer thereof has been granted a current Trainer's registration by ~~the Commission Licensee or its Registrar~~.

7.02 Requirements for Trainer's Registration:

In addition to satisfying the requirements applicable to Permittees, et al., imposed by Part 2 of these Rules, in order to be eligible for registration as a Trainer, a person:

(a) Must be an individual 18 years or older; no Trainer

may be licensed to train under an assumed or stable name;

(b) Must be qualified by experience or competence to care for and train race horses;

(c) Must have in his charge a horse eligible to race;

(d) Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds other than those registered as being in his charge.

1. A registered Trainer may not concurrently participate in racing in this State as a Jockey, Apprentice Jockey, Jockey's Agent, Veterinarian, Assistant Veterinarian, Dental Technician, Farrier, Apprentice Farrier, or as an employee in Licensee's racing department, except as provided by Rule 8.03.

2. ~~The Commission Licensee or its Registrar~~ may deny, suspend or revoke a Trainer's registration for the spouse or any member of the immediate family or household of a person ineligible to hold a Trainer's license under these Rules, unless there is a showing by the applicant or registered Trainer, and ~~the Commission Licensee or its Registrar~~ so finds, that his participation in racing as a Trainer will in no way circumvent the intent of these Rules by permitting a person, under the control or direction of a person ineligible to hold a Trainer's license, to serve in effect as the alter ego of such ineligible person.

7.03 Duties and Responsibilities:

A registered Trainer shall bear primary responsibility for the proper care, health, training, condition, safety and protection against administration of prohibited drugs or medication of horses in his charge. A registered trainer:

(a) Shall register with the Racing Secretary all persons in his employ and insure that they duly apply for permits within 24 hours after they arrive on Licensee's grounds or are employed. Upon discharge of an employee, a Trainer must promptly notify the Racing Secretary and the Licensee or its Registrar.

(b) All Owners and Trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses.

(c) Shall register with the Racing Secretary all horses in his charge in the manner required by Rule 6.03. No registered Trainer may take or keep in his charge a horse owned wholly or in part, or controlled by, a person who is not registered as an Owner. No registered Trainer shall assume responsibility for horses not under his active care and supervision, except as provided by Rule 7.03(f).

(d) Shall bear the absolute responsibility to report bleeders from other jurisdictions to the ~~Commission's Licensee's~~ Veterinarian or Stewards, on official forms from that state, prior to entry

(e) Shall bear primary responsibility for horses he enters as to eligibility, weight allowances claimed, physical

fitness to perform creditably at the distance entered, absence of prohibited drugs or medications, proper shoes, bandages and equipment, and timely arrival in the saddling paddock. A registered Trainer shall be jointly responsible with the registered Owner for horses he enters as to stakes payments and jockey fees due.

(f) When entering horses, Trainers shall furnish, as first call, the name of the Jockey engaged to ride each horse entered and, as second call, the name of an alternate Jockey to ride each horse entered, if possible at the time of entry, but in no event later than scratch time unless part of an entry. If no first or second call Jockey has been named to ride a horse entered to race by scratch time, then the Stewards shall select a rider to ride such horse.

(g) Shall personally attend his horses in the paddock and supervise the saddling thereof, unless excused by the Stewards. If a registered Trainer is to be absent from Licensee's grounds where his horses are stabled, he must provide a substitute -- his registered Assistant Trainer or another registered Trainer -- to attend the saddling of horses already entered and to assume complete responsibility for horses to be entered. Such substitute must be approved by the Stewards and shall sign in the presence of the Stewards a form furnished by Licensee accepting complete responsibility for horses he so enters.

(h) May attend the taking and testing of a saliva, urine or blood sample from a horse in his charge by the Commission's ~~Licensee's~~ Veterinarian and/or Chemist, or may delegate one of his employees holding an authorization or permit to do so.

(i) Shall maintain the stable area assigned to him in a clean, neat and sanitary condition at all times and insure that fire prevention rules are strictly observed in his stable area.

(j) Shall promptly report to the Commission's ~~Licensee's~~ Veterinarian any sickness or death of any horse in his charge.

7.06 Assistant Trainer:

A registered Owner or registered Trainer may employ an Assistant Trainer. Such Assistant Trainer must obtain an authorization from the Commission ~~Licensee or its Registrar~~ before acting in such capacity on behalf of his employer. Qualifications for obtaining an Assistant Trainer's authorization shall be prescribed by the Stewards. An authorized Assistant Trainer shall assume the same duties and responsibilities as imposed on a registered Trainer. The registered Trainer shall be jointly responsible with his Assistant Trainer for all acts and omissions of such Assistant Trainer involving a racing matter

PART 8 -- JOCKEYS AND APPRENTICE JOCKEYS

8.01 Probationary Mounts:

Any person desiring to participate at Licensee's

premises as a rider and who never previously has ridden in a race may be permitted to ride in two races before applying for a permit as a Jockey or Apprentice Jockey, provided, however:

(a) Such person has had at least one year of service with a racing stable and currently holds a permit issued by the Commission ~~Licensee or its Registrar~~ for a recognized activity in racing;

(b) A registered Trainer certifies in writing to the Stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

(c) The Starter has schooled such person in breaking from the starting gate with other horses and approves such person as being capable of starting a horse properly from the starting gate in a race;

(d) The Stewards, in their sole discretion, are satisfied that such person intends to become a licensed Jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without the prior approval of the Stewards.

PART 9 -- AGENTS, AUTHORIZED AND JOCKEY

9.01 Agency Permitted:

Any registered Owner or Jockey or Apprentice Jockey holding a permit issued by the Commission ~~Licensee or its Registrar~~ may, as a principal, authorize another person as an agent to act in such principal's behalf in all matters pertaining to racing and transfer of horses at Licensee's premises. Such authorization shall be in writing and shall define the powers, limits and terms of such agency.

9.03 Termination of Agency:

Such Agency shall remain in effect until written notification of revocation is received from the principal by the Commission ~~Licensee or its Registrar~~. In the event a Jockey Agent is dismissed by his employer, or if a Jockey Agent discontinues making engagements for a rider, then such Jockey Agent shall immediately notify the Stewards and turn over to the Clerk of Scales a list of any unfulfilled engagements such Jockey Agent may have made for such rider.

9.04 Acts by Authorized Agent:

Unless precluded by specific limitations in the agency appointment, an Authorized Agent who is registered or who holds a permit granted by the Commission ~~Licensee or its Registrar~~ may perform at Licensee's premises on behalf of the registered owner-principal all acts pertaining to racing, including the transfer of ownership of horses, as could be performed by the principal were he present. In executing any document on behalf of the principal, an Authorized

Agent shall clearly indicate that he is acting as an Authorized Agent and shall specify the principal for whom he is acting. When an Authorized Agent enters a claim for the account of his principal, the name of the registered Owner for whom the claim is being made and the name of the Authorized Agent shall appear on the claim slip.

9.05 Riding Engagements:

No person other than the contract employer or licensed Jockey Agent who holds a permit issued by the Commission Licensee or its Registrar may make riding engagements for a rider, except that a Jockey not represented by an Agent may make his own riding engagements. Such persons permitted to make riding engagements shall maintain in their possession at all times an engagement book and shall record therein riding engagements made, the same being subject to examination by the Stewards at any time. No Jockey Agent may enter the Jockey room, paddock or racing strip during the hours of racing.

PART 10 -- HORSES**10.03 Denervng:**

Any horse on which a neurectomy has been performed shall have such fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the Trainer of such denerved horse to insure that such fact is designated on the registration certificate or racing permit.

(a) Any horse whose ulnar, radial or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed, unilaterally or bilaterally, shall not be entered or raced in this State.

(b) Any horse which has had a posterior digital neurectomy (known as low nerved) may be permitted to race provided such denervng has been reported by the Trainer to the Stewards and such horse has been approved for racing by the Commission's Licensee's Veterinarian prior to being entered for a race.

(c) In the event a horse races in violation of this Rule and participates in the purse distribution, then no protest thereon will be considered unless submitted in writing to the Stewards within 48 hours after such race.

(d) In the event a horse races in violation of this Rule and is claimed, then no protest thereon will be considered unless the successful claimant submits such protest in writing within 48 hours requesting that his claim be voided. Should the claim be voided, the horse shall be returned to the Owner who started such horse in such race and the claim price shall be returned to the claimant.

(e) A list of all denerved horses shall be posted in the Racing Secretary's Office. No person shall report a horse as having a neurectomy when in fact such horse has not.

10.04 Bleeders:

Any horse known to have bled from its nostrils during a race or workout may not be entered or raced without the prior approval for racing by the Commission's Licensee's Veterinarian. A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. (A positive endoscopic examination shall be classed as a first time bleeder). See Rule 15.02 Bleeder Medication.

10.07 Removal from Licensee's Grounds:

No dead or sick horse may be removed from Licensee's grounds without the prior approval of the Commission's Licensee's Veterinarian.

PART 11 -- ENTRIES, SUBSCRIPTIONS, DECLARATIONS**11.02 Procedure for Making Entries**

It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

All entries, subscriptions, declarations and scratches shall be lodged with the Racing Secretary and shall not be considered as having been made until received by the Racing Secretary who shall maintain a record of time of receipt of same.

(a) Every entry must be in the name of such horse's registered Owner, as completely disclosed and registered with the Racing Secretary under these Rules and made by the Owner, Trainer or a person deputized by such Owner or Trainer.

(b) Every entry must be in writing, or by telegraph promptly confirmed in writing, except that an entry may be made by telephone to the Racing Secretary but must be confirmed in writing should the Stewards, the Racing Secretary or an assistant to the Racing Secretary so request.

(c) Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age color, sex, sire, dam and broodmare sire, as reflected by such horse's

registration certificate.

1. No horse may race unless correctly identified to the satisfaction of the Stewards as being the horse duly entered;

2. In establishing the identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the Owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.

(d) At the time of entering a horse, the Trainer of such horse or his representative, must declare to the Racing Secretary or his representative, whether the horse will race on any medication permitted by these Rules and shall not deviate from such declaration.

Within the discretion of the Stewards, a list of horses so declared to race on medication may, in whole or in part, be announced, released for publication or otherwise made public without liability for the accuracy thereof.

(e) In order to claim an apprentice allowance at the time of entry, an Apprentice Jockey must be designated by name.

(f) No alteration may be made in any entry after the closing of entries, except that an error may be corrected.

(g) No horse may be entered in two races to be run on the same day.

PART 15 -- MEDICATION, TESTING PROCEDURES

15.02 Bleeder Medication:

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Commission's Licensee's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's Licensee's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's Licensee's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Commission's Licensee's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

(d) A horse in the Bleeder Program shall be required to be brought to a detention barn designated by the Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (Deleted.)

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

15.04 Reports of Administration:

Before a licensed Veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these Rules.

If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the State Veterinarian and Stewards.

(a) Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Track Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be

grounds for disciplinary action against such Veterinarian.

(b) Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

(c) Such daily reports shall remain confidential except that the Commission's Licensee's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.02(d) respecting a public list of horses declared to race on medication.

(d) When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or his representative whether said horse will race on any medication permitted by these rules.

15.05 Report Prior to Race of Cessation or Reduction of Medication:

For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Licensee's Veterinarian by the horse's Owner Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

Violation of this Rule will constitute grounds for disciplinary action.

15.06 Bettors' Safeguard:

To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable level, unless the Commission's Licensee's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

15.08 Detention Area:

Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Licensee's Veterinarian.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))

*** PLEASE NOTE: THE FOLLOWING PROPOSED REGULATORY CHANGES WILL BE CONSIDERED AT THE MONTHLY MEETING OF THE STATE BOARD OF EDUCATION ON THURSDAY, MAY 18, 2000 AT 2:00 P.M.**

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

MICHAEL C. FERGUSON ACHIEVEMENT AWARDS SCHOLARSHIP PROGRAM

A. TYPE OF REGULATORY ACTION REQUESTED New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to adopt regulations concerning the Michael C. Ferguson Achievement Awards Scholarship Program. Section 377 of the Epilogue to the FY 2000 budget requires the Department of Education to promulgate regulations to implement this program. The scholarship program provides for 600 scholarships annually of \$1,000 each for students who demonstrate superior performance on the assessments administered pursuant to 14 *Del. C.*, Section 151 (b) and (c) of the Accountability legislation. The scholarships will be awarded annually to the students with the 150 highest scores on the DSTP without reference to any other indicators of performance and to the students with the 150 highest scores on the DSTP who participate in free and reduced lunch programs. Students in grade 8 and grade 10 are eligible for the scholarships for their scores on the reading, writing and mathematics assessments.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards

The scholarships are one of a number of methods designed to help motivate students to do well on the state assessments.

2. Will the new regulation help ensure that all students receive an equitable education?

The new regulation addresses student scholarships, not equity issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected?

The new regulation addresses student scholarships,

not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected?

The new regulation addresses student scholarships, not student's legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The new regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level?

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon the decision makers at the local board and school levels?

The new regulation will not place unnecessary reporting or administrative requirements or mandates upon the decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity?

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The new regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

9. Is there a less burdensome method for addressing the purpose of the new regulation?

The budget epilogue requires the Department of Education to make the regulation.

10. What is the cost to the state and to the local school boards of compliance with the new regulation?

The state will provide the money for the cost of the scholarships.

Michael C. Ferguson Achievement Awards Scholarship Program

The Michael C. Ferguson Achievement Awards Scholarship Program, included in the Educational Accountability Act of 1998, recognizes students who demonstrate superior performance on the assessments administered pursuant to 29 Del. C., Section 151(b) and (c).

1.0 Subject to available funding, the Michael C. Ferguson

Achievement Awards shall be made based on the student's score on the results of the annual spring administration of the Delaware Student Testing Program. Scores from re-testing shall not be considered. The Scholarships may be awarded to a maximum of 300 eighth grade students in the content areas of reading, writing and mathematics and to a maximum of 300 tenth grade students in the content areas of reading, writing, and mathematics.

1.1 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics shall receive the scholarships.

1.1.1 The eighth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.1.2 The tenth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.2 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in section 1.1, shall receive the scholarships.

1.2.1 The eighth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.2.2 The tenth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

2.0 Students may receive a scholarship in more than one content area and may also receive scholarships for their 8th and their 10th grade scores.

3.0 All scholarship awards shall be deposited in an account at the Delaware Higher Education Commission in an interest bearing account. Interest earned shall be utilized by the Department of Education and/or Delaware Higher Education Commission to offset administrative expenses associated with the program.

3.1 Funds deposited for scholarships through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a post secondary institution within five calendar years after graduating from high school.

3.2 It is the responsibility of the parent or guardian to notify the Higher Education Commission of any change of address during the scholarship eligibility period. Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary

institution.

3.3 The Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships.

3.4 The Delaware Higher Education Commission shall send a "Request for Information" form to Michael C. Ferguson Scholarship recipients in the spring of their high school senior year to determine whether they plan to use their scholarship in the following year, and which institution they will attend.

3.4.1 In August following high school graduation, the Delaware Higher Education Commission shall send enrollment verification forms to institutions identified by recipients. When completed verification forms are received by the Delaware Higher Education Commission, disbursement of scholarship funds will be made to the institution.

3.4.2 If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the parent or guardian's responsibility to provide timely notification to the Delaware Higher Education Commission prior to enrollment in order to receive payment of the scholarship.

3.4.3 Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education Commission of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL.C., SECTION 122(d)**

SCHOOL CUSTODIANS

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary seeks the approval of the State Board of Education to amend the regulation on School Custodians (November 1998) by changing 1.0 to read "Custodians may be granted one (1) year's experience for each creditable year of experience in similar employment." This change brings the statement in line with the statements used for Secretaries and for Food Service Employees that uses "creditable year" instead of "full year" of experience. Another change being recommended is to insert the words "or 24 units" after the words "not to exceed 48 acres" in 2.2.11 for clarification purposes.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement

standards

The amended regulations address personnel issues, not student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations address personnel issues, not equity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address personnel issues, not health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations address personnel issues, not students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon the decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subjects to be regulated will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulations?

The changes must be made through amendments to regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations?

There is no additional cost to the state or local school boards for compliance with the amended regulations.

School Custodians

46 - 50	4 ½
51 - 55	5
56 - 60	5 ½
61 or more	

1.0 EXPERIENCE: Custodians may be allowed one (1) year's experience for each ~~full~~ creditable year of experience in similar employment.

2.0 ALLOCATION

2.1 The custodial units allocated to a district may be assigned to various locations at the discretion of the local school board and the chief school officer.

2.2 Districts are allocated one (1) full-time custodial employee for each twelve (12) custodial units or for a major fraction thereof. The number of units in each school is determined in the following way:

2.2.1 One (1) unit for each classroom or its equivalent. What is counted as "equivalent" shall be determined by the Department of Education.

2.2.2 One (1) unit for a small auditorium (less than 150 students).

2.2.3 Two (2) units for a large auditorium (more than 150 students).

2.2.4 One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.

2.2.5 One (1) unit for a gymnasium.

2.2.6 One (1) unit for a combined auditorium and gymnasium (less than 150 students).

2.2.7 Two (2) units for a combined auditorium and gymnasium (more than 150 students).

2.2.8 One (1) unit for two locker rooms.

2.2.9 Seven (7) units for a swimming pool.

2.2.10 Units for a central heating plant are determined from the following table:

No. of Classrooms or equivalent	No. of Units
1 - 6	½
7 - 9	¾
10 - 15	1
16 - 20	1 ½
21 - 25	2
26 - 30	2 ½
31 - 35	3
36 - 40	3 ½
41 - 45	4

2.2.11 One-half (1/2) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site.

2.3 Part-time custodians equivalent to one or more full-time custodians may be employed with the provision that proper records will be maintained for review.

2.4 A full custodial staff for a new school building may be employed one (1) month prior to the pupil occupancy of the building.

2.5 The termination date for custodial units in buildings closed shall be six (6) weeks from the last day classes are held in the building.

2.6 Buildings which are closed and retained under the control of the school district shall lose all custodial units except units provided for site maintenance and heating.

2.7 When the school district signs a lease or in any way loses direct control of the building, such as transfer or sale legislation, the custodial units for site maintenance and heating shall terminate on the effective date of the lease or legislation.

2.8 When the function of a building is changed it shall be reevaluated for custodial units.

2.9 All custodial unit allocations shall be determined and approved by the Department of Education.

3.0 CLASSIFICATION

3.1 Custodian-Fireman

3.1.1 When there is only one (1) custodian in a district, the custodian may be classified as a custodian-fireman.

3.1.2 There shall be only one custodian-fireman employed in each building.

3.2 Chief Custodian

3.2.1 A chief custodian may be classified chief custodian when at least two other full-time custodians or the equivalent are employed in the school building or district.

3.2.2 There can be only one (1) chief custodian in a building, but there can be as many chief custodians in a district as there are buildings in the district with three or more custodians.

3.3 Maintenance Mechanic: Each school district may classify up to ten (10) percent of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing board.

3.4 Skilled Craftsperson

3.4.1 Each district may classify an incumbent in one or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:

3.4.1.1 has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or

3.4.1.2 possesses a current state license in any of the fields listed in paragraph 3.4.1.1 above; or

3.4.1.3 is an Automobile Mechanic who possesses two or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or

3.4.1.4 is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or

3.4.1.5 is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or

3.4.1.6 is an HVAC Mechanic who possesses two or more certifications from manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or

3.4.1.7 possesses two or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or

3.4.1.8 is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or

3.4.1.9 is a Roofer who possesses Training Certifications from two or more manufacturers of Roofing Systems in use by the District; or

3.4.1.10 is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.

3.5 Building and Grounds Supervisor: Each district with ninety-five (95) or more custodial units may employ a school buildings and grounds supervisor according to the salary schedule. This position is included in the total number of custodial personnel allowed. Section 1311(c).

4.0 CERTIFICATES

4.1 The following hourly requirements shall be met in order to receive the Custodial Certificates listed below. The certificate guarantees additional pay as specified in the Del. C., but only the local school district can change a custodian's classification.

4.1.1. 120 class hours minimum Building and Grounds Supervisor (issued only to those who hold this position)

4.1.2 120 class hours Chief Custodian Certificate

4.1.3 90 class hours Fireman Custodian

Certificate

4.1.4 60 class hours General Custodian Certificate

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

MIDDLE LEVEL MATHEMATICS AND SCIENCE CERTIFICATION

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the approval of the State Board of Education to make two amendments to the certification regulations concerning middle level certification in mathematics and science. These amendments are found in the Manual for Certification of Professional Public School Personnel, page 34, Section 2 and page 12, Chapter II. The purpose of these amendments is to provide added flexibility in the certification requirements for middle level mathematics and science teachers for an additional 2 year period (7/1/00 – 6/30/02).

The amendment found on page 34, Section 2 changes the dates the policy is effective following the line, "All secondary science certificates are valid in middle level science, Grades 5-8". The other amendment found on page 12, Chapter II, amends part A.3.f., Limited Standard - Middle Level Math/Science (LS-ML) by stating that this certificate will only be issued for 1 year and by extending the effective dates of the policy to July 1, 2000 through June 30, 2002.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards

The amended regulations do not specifically address student achievement, they address flexibility needs for the certification of middle level mathematics and science teachers.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations do not address equity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations do not address health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations do not address students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon the decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subjects to be regulated will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulations?

The changes must be made through amendments to regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations?

There is no additional cost to the state or local school boards for compliance with the amended regulations.

Effective July 1, 1993

**DELAWARE STATE DEPARTMENT OF
EDUCATION
CERTIFICATION OF PROFESSIONAL PUBLIC
SCHOOL PERSONNEL**

SCIENCES

All secondary science certificates are valid in middle level science, Grades 5-8. (Policy effective ~~7/1/98 through 6/30/2000~~ 7/1/00 – 6/30/02 only)

- I. Requirements for the Standard License
- A. Bachelor's degree from an accredited college; and
 - B. Professional Education
 1. Completion of an approved teacher education

program in Science;

-OR-

2. A minimum of 24 semester hours to include human development, methods of teaching secondary science, teaching of reading in science or identifying/treating exceptionalities, effective teaching strategies, multicultural education, and clinical experience/student teaching at the secondary (7-12) level;

-AND-

C. Specific Teaching Field

1. Major in the field of endorsement;

-OR-

2. Completion of an approved teacher education program in the field of endorsement;

-OR-

3. Completion of (at least) the semester hours indicated below for the field of endorsement:

- a. CHEMISTRY45 semester hours
(required 9-12, valid Chemistry only)

Limited Standard - Middle Level Math/Science (LS-ML)

f. ~~May~~ Shall be issued for ~~up to three (3) years~~ 1 year to a teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall work to complete the requirements for the Standard Certificate in the area(s) of the assignment. This regulation will be effective ~~7/1/98 through 6/30/2000~~ 7/1/00 through 6/30/02.

**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122(d)**

**DELAWARE SECONDARY SCHOOL ATHLETIC
ASSOCIATION**

A. TYPE OF REGULATORY ACTION REQUESTED
New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal in its entirety the regulations of the Delaware Secondary School Athletic Association found in the 34th Annual Official Handbook of DSSAA, 1999-2000 and replace those regulations with these recommended regulations. These regulations have been totally reformatted to reflect the current format of the regulations of the Department of Education and editorial

corrections have been made. The DSSAA regulations are now contained in the following sections: 1049 DSSAA Definitions, 1050 DSSAA Sportsmanship, 1051 DSSAA Senior High School Interscholastic Athletics, 1052 DSSAA Junior High/Middle School Interscholastic Athletics, 1053 DSSAA Waiver Procedures, 1054 DSSAA Investigative Procedure, 1055 DSSAA Appeal Procedure, and 1056 Recognition of Officials Association. In addition the following substantive changes have been made to the regulations:

DSSAA Senior High School Interscholastic Athletics:

1.0 Eligibility

1.2.8 and 1.2.8.1: This provision is being deleted from 1.2 Enrollment and Attendance because it deals with additional eligibility during a student's fifth year of attendance which is more appropriately addressed in 5.0 Participation.

1.3.2: This proposal reduces the penalty for non-compliance with 1.3 Resident and 1.4 Transfer by students who have reached the age of majority from ineligibility for 180 school days to ineligibility for 90 school days and makes it consistent with the penalty imposed on students who are minors.

1.5.1.5.1: This revision raises the permissible dollar value from \$25.00 to \$50.00 for complimentary items given to the athletes participating in a sanctioned tournament.

5.0 Participation

5.1.1, 5.1.2, and 5.1.2.1: These proposals do not fundamentally change 5.0 Participation but clarify it so that students and their parents will better understand that they are not guaranteed four seasons of participation in a particular sport but rather four opportunities to participate during a particular sports season. A fifth-year senior will be allowed to compete only if a hardship condition precluded his/her graduation within the normal four-year period of eligibility and also caused the loss of all or part of one of his/her four opportunities to participate during a particular sports season, that student is not guaranteed additional eligibility if he/she returns for a fifth year simply because he/she did not participate for four seasons in a particular sport.

7.0 Foreign Exchange Students

7.2: This revision makes 7.0 Foreign Exchange Students/Foreign Students more concise but does not change the intent or application of the rule. A foreign student who is not participating in a CSIET listed or other approved exchange program is considered a transfer student and is required to satisfy all DSSAA eligibility requirements including 3.0 Residence.

11.0 Contracts Interchanged

11.2.2 and 11.4: These proposals clarify 11.0 Contracts Interchanged by clearly establishing the circumstances in which a forfeit will be awarded. If a game isn't played, it will be considered "no contest" unless a signed individual contract or a conference master contract was in place and one of the participating schools breached the agreement.

17.0 Codes

17.2: This provision establishes that the DSSAA Board has adopted United States Lacrosse Association rules for the sport of girls' lacrosse.

23.0 Sports Season and Practices

23.7.2, 23.7.2.1, 23.7.2.2, and 23.7.2.3: 23.7 currently prohibits coaches from having instructional contact with their returning players outside of the designated sports season. 23.7 and 23.7.2 prohibit coaches from also participating on teams which includes their returning players and from officiating contests in which their returning players are participating. This proposal relaxes 23.7.2 somewhat by permitting coaches to officiate contests in which their returning players are participating provided those contests are part of organized league competition. The proposal includes a detailed definition of organized league competition.

24.0 Maximum Game Schedules and Designated Sports Season

24.4: This revision clearly differentiates between a "postponed" game (inclement weather, unplayable field conditions, visiting team bus breaks down, officials fail to appear, etc.) and a "rescheduled" game. A "postponed" game can be rescheduled at the convenience of the participating schools provided neither school plays more than four games in a week, while a "rescheduled" game is subject to the team limitation of three games per week with the third game on Friday (no early dismissal), Saturday, or Sunday.

26.0 Awards

26.5: This revision raises the permissible dollar value for non-symbolic competition awards from \$25.00 to \$50.00 per recipient which is consistent with the proposed increase in the dollar value of complimentary items.

30.0 Use of Officials

30.2.2 and 30.2.3: Contest officials are currently required to attend an approved rules clinic and pass a rules examination in the same season at least every other year in order to work varsity games. They are required to satisfy both requirements in the same season at least every third year in order to work subvarsity games. Failure to satisfy both requirements in the same season for three consecutive years results in a loss of certification. This proposal permits

a contest official who does not comply with the aforementioned requirements for three consecutive years to continue to work subvarsity games. DSSAA is experiencing a shortage of officials in several sports and this proposal will at least help to address the problem at the subvarsity level.

31.0 Summer Camp Participation and Sponsorshi

31.0: This proposal involves only a change in the name of the rule.

31.2.5: This revision eliminates unnecessary paperwork and streamlines the procedure for school related groups to provide financial assistance to students who are attending summer camps and clinics.

34.0 Commercial Camps and Clinics:

This proposal changes the name of the rule and clarifies that the revised rule pertains to camps and clinics being conducted by both commercial and non-profit entities.

DSSAA Junior High/Middle School Interscholastic Athletics

5.0 Participation

5.1 and 5.2: These revisions make 5.0 Participation for middle schools comparable to 5.0 Participation for high schools. Students in middle schools which permit 6th graders to participate will be eligible for three consecutive years from their first entry into 6th grade. Students in middle schools which restrict participation to 7th and 8th graders will be eligible for two consecutive years from their first entry into 7th grade. Instances of students repeating 8th grade despite being competent students are becoming more common and these students are participating in an extra season which amounts to de facto red shirting. Regardless of their motivation for repeating 8th grade, they are gaining an athletic advantage and adversely affecting the opportunities of other students.

23.0 Maximum Game Schedules and Sports Seasons

23.1: This proposal will increase the number of permissible contests in middle school wrestling from ten to twelve.

23.2 This change is similar to the proposed change to 24.4 for high schools. The difference between the middle school proposal and the high school proposal is that middle schools are restricted to a total of three regularly scheduled and makeup contests per week while high schools are restricted to a total of four regularly scheduled and makeup contests per week.

C. IMPACT CRITERIA

1. Will the regulations help improve student achievement as measured against state achievement standards?

The regulations address student athletic programs, not student achievement.

2. Will the regulations help ensure that all students receive an equitable education?

The regulations address student athletic programs, not equity issues.

3. Will the regulations help to ensure that all students' health and safety are adequately protected?

The regulations address student athletics, and the health and safety of the athletes are a part of the regulations.

4. Will the regulations help to ensure that all students' legal rights are respected?

The regulations do address the rights and responsibilities of the student athletes.

5. Will the regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision-making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The regulations will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulations?

The *Del. C.* requires that there be regulations to govern the conduct of interscholastic athletics.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

There is no additional cost to the state and to the local school boards for compliance with these regulations.

1000 Student Activities

1001 Participation in Extra-Curricular Activities
1 DE Reg 173 (8/1/97)

- 1002 Membership in Fraternities and Sororities
1 DE Reg 723 (12/1/98)
- 1025 Delaware Secondary School Athletic Association (DSSAA)
1 DE Reg 725 (12/1/97)
- 1049 DSSAA Definitions
- 1050 DSSAA Sportsmanship
- 1051 DSSAA Senior High School Interscholastic Athletics
- 1052 DSSAA Junior High/Middle School Interscholastic Athletics
- 1053 DSSAA Waiver Procedure
- 1054 DSSAA Investigative Procedure
- 1055 DSSAA Appeal Procedure
- 1056 Recognition of Officials' Associations

1001 Participation in Extra-Curricular Activities

1.0 In order to be eligible for participation in non-credit granting extra-curricular activities, each participant shall pursue a regular course of study or its equivalent as approved by the Department of Education, and must be passing at least five credits beginning with the 1998-1999 school year. Two of these credits must be in the academic areas such as English, mathematics, science, or social studies.

2.0 Any twelfth grade student who wishes to participate in extra-curricular activities shall be passing all courses necessary for graduation from high school.

3.0 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in extra-curricular activities for the next marking period. In case of a conflict between the mark of a report period or regular final grade, the semester or final mark shall determine eligibility. When a student makes up a failure during the summer or earns the required credit or credits, the student shall become eligible.

4.0 Local school boards may establish requirements over and above these minimums prescribed for eligibility.

See 1 DE Reg 173 (8/1/97)

1002 Membership in Fraternities and Sororities

1.0 No pupil enrolled in a public school in any school district of Delaware shall be a member of a fraternity or sorority, or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization.

1.1 The local board of education is hereby authorized upon finding that any pupil is a member of a high school fraternity, sorority or social organization as above defined to exclude such pupil from representing the school in

any public activity, contest, or exhibition such as athletic, literary, or dramatic and from participating in any school activity other than class attendance and from holding a position of authority in any school or class organization.

1.2 Nothing in this regulation shall be deemed as prohibiting the local board of education from excluding any pupil from class in those instances where the behavior of such pupil is detrimental to school discipline.

1.3 Any definition of fraternity, sorority, or secret exclusive self-perpetuating social organization shall not be deemed to include youth organizations or fraternal orders, religious and church organizations, or similar organizations which are institutionally sponsored and approved and which are organized with responsible adult leadership and supervision.

1.4 Where schools do approve of student organizations and clubs which do not fall under the definition of fraternity, sorority, or secret organization, it becomes the responsibility of the school administration and the sponsoring persons to develop these recommended procedures:

1.4.1 establishment of the purposes and criteria for membership in the organization;

1.4.2 establishment of guidelines to be followed in the selection of members; and

1.4.3 establishment of methods to notify applicants or candidates as to acceptance or non-acceptance as a member in the organization. This procedure assures that students are made aware of the reasons for nonadmittance to membership selectivity.

See 1 DE Reg 723 (12/1/98)

1025. Delaware Secondary School Athletic Association (DSSAA)

1.0 The Delaware Secondary School Athletic Association (DSSAA) shall, as the official designee of the Secretary of Education, have the authority to implement the Department of Education's rules and regulations governing the conduct of interscholastic athletics. This authority is granted with oversight by the Department of Education. Disputes involving the rules and regulations governing interscholastic athletics are subject to State Board review.

2.0 The Delaware Secondary School Athletic Association shall be under the general management of a Board of Directors with the Education Associate for Interscholastic Athletics in the Department of Education serving as the Executive Director. All recommendations for modifying the regulations must be proposed by the Secretary of Education and approved by the State Board of Education with the advice and guidance of the DSSAA Board of Directors.

3.0 The principals of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative

teams participate including the organization and scheduling of individual and team sports.

4.0 All interscholastic athletic activities in the middle level and high school shall be conducted in accordance with the Department of Education's regulations and as they may be amended hereafter as proposed by the Secretary of Education and approved by the State Board with the advice and guidance of the DSSAA Board of Directors.

See 1 DE Reg 725 (12/1/97)

1049 DSSAA Definitions

1.0 The following definitions shall apply to both Senior High and Junior High/Middle School Interscholastic Athletics

1.1 Commercial Sports Camp: A camp operated for profit which provides coaching or other sports training for a fee.

1.2 Scrimmage: An informal competition between schools in which the officials are not compensated, score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt play to provide instruction and the competition is strictly for practice purposes.

1.3 Professional Team: A team having one or more members who have received, or are receiving directly or indirectly, monetary consideration for their athletic services.

1050 DSSAA Sportsmanship

1.0 Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and/or to the spectators that the coach believes the game is being

improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.

1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

1.5.1 The School Administrator and Athletic Director shall:

1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.

1.5.1.2 Review the Sportsmanship Rule with all athletic staff.

1.5.1.3 Insist upon strict compliance with all DSSAA rules and regulations.

1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.

1.5.2 The Coach shall:

1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.

1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well-being of the individual players and that the most important values of competition are derived from playing the game fairly

1.5.2.3 Be a modest winner and a gracious loser

1.5.2.4 Maintain self-control at all times

and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels.

1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.

1.5.2.6 Pay close attention to the physical well-being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.

1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly

1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.

1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.

1.5.2.10 Properly supervise the athletes under his/her immediate care.

1.5.3 The Participant (athletes and cheerleaders) shall:

1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of your school and community.

1.5.3.2 Be courteous to the visiting team. Your opponents wish to excel as much as you do. Respect their efforts.

1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.

1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.

1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.

1.5.3.6 Respect the integrity and judgement of the officials and accept their decisions without complaint.

1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.

1.5.4 The Official shall:

1.5.4.1 Know the rules and interpretations and be thoroughly trained to administer them.

1.5.4.2 Maintain self-control in all situations.

1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches.

1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.

1.5.4.5 Refrain from commenting upon

or discussing a team, player, or game situation with those not immediately concerned.

1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship.

1.5.5 The Spectator shall:

1.5.5.1 Realize that he/she represents the school just as definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman and to encourage through his/her behavior the practice of good sportsmanship by others.

1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:

1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, and/or derogatory remarks.

1.5.5.2.2 Throwing objects.

1.5.5.2.3 Going onto the playing surface and interrupting a contest.

1.5.5.2.4 Use of alcohol or other controlled substances.

1.5.5.3 Respect the judgement and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.

1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

1.5.5.5 Be modest in victory and gracious in defeat.

2.0 Processing Violations

2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.

2.1.3 The Executive Director shall transmit a copy of the report to the principal of the school(s) involved.

2.1.4 Each principal concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide member schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and infor

the school(s) involved of any recommendations. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DSSAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of member schools may be imposed by the Sportsmanship Committee.

2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

2.2 Policies

2.2.1 The basis for the following policy statement is that a member school shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.1.1 Reprimanding its administrator or athletic director and providing written documentation to the Executive Director, or

2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.1.3 Having the entire school disciplined by DSSAA.

2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the principal, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 school days.

2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking legal action against the offender or accepting discipline from DSSAA.

2.2.1.4 Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DSSAA.

2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or

2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.5.3 Having the entire school disciplined by DSSAA.

2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:

2.2.1.6.1 He/she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or

2.2.1.6.2 He/she argues with the official or indicates with gestures or other physical actions his/her dislike for a decision, or

2.2.1.6.3 He/she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or

2.2.1.6.4 He/she makes disparaging or unprofessional remarks about another school's personnel.

2.2.1.7 All actions by a member school resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director and/or the Sportsmanship Committee.

2.3 Penalties

2.3.1 Game Ejection

2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconduct shall be suspended from the next regularly scheduled contest at that level of competition and all other contests in the interim at any level of competition in addition to any other penalties which DSSAA or a conference may impose.

2.3.1.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next regularly scheduled contest at that level of competition and all other contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.

2.3.1.2 A disqualified player or coach may not be physically present at any contest in that sport during his/her suspension.

2.3.1.3 If a coach is disqualified from the final contest of the season, his/her suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility

in that sport.

2.3.1.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.

2.3.1.3.2 Seniors shall fulfill their penalty in the post-season all-star game in that sport. If not chosen to participate in the all-star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

See 3 DE Reg 436 (9/1/99)

2.3.1.4 A player or coach ejected for a second time during the same season shall be subjected to a two-game suspension and meet, in a timely fashion, with the Sportsmanship Committee accompanied by his/her principal or designee and, in the case of an athlete, by his/her coach.

2.3.2 The following penalties represent degrees of discipline in enforcing the Sportsmanship Rule:

2.3.2.1 Reprimand - a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.

2.3.2.2 Probation - probation is a more severe penalty and may be imposed by the Executive Director or the Sportsmanship Committee on a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:

2.3.2.2.1 Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he/she/the school files with DSSAA a plan indicating the measures that shall be taken to alleviate the problem which caused him/her/the school to be placed on probation, or

2.3.2.2.2 Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.

2.3.2.3 Suspension - a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DSSAA sanctioned interscholastic competition.

2.4 Appeals

2.4.1 Decisions of the Executive Director or Sportsmanship Committee may be appealed to the DSSAA Board of Directors in accordance with the procedure found in Regulation 1055 DSSAA Appeal Procedure. However,

Notice of Appeal shall be served by certified mail within ten (10) calendar days after receipt by the appellant of written notice of the action of the Executive Director or Sportsmanship Committee.

1051 DSSAA Senior High School Interscholastic Athletics

1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

1.1 Age

1.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15 shall be ineligible for all sports.

See 3 DE Reg 437 (9/1/99)

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact or non-collision sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the high school which he/she represents and must be in regular attendance by September 20.

1.2.1.1 A student who enters school after September 20 shall not be eligible to participate until February 1.

1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.

1.2.2 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school.

1.2.2.1 A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements.

1.2.2.2 A shared-time student shall not be eligible to participate at the school at which he/she is receiving only specialized educational instruction; e.g., vocational training.

1.2.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic

requirements of the "choice school". If a student attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics (see 1.4.11).

1.2.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.5 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.5.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day

1.2.6 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

1.2.7 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.

1.3. Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, under authority of a policy of the local board of education, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and subsequently transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking

period and is granted permission to continue attending his/her present school via established district policy for such, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

1.3.1.5 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.6 A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 *Del. C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

See 3 DE Reg 437 (9/1/99)

1.3.2 Notwithstanding 1.4, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 *Del.C.*, Ch. 4, provided the student's choice application was properly submitted prior to the his/her change of residence.

See 3 DE Reg 437 (9/1/99)

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12 except as specified in 5.2) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to local school board policy.

1.4.2.2 The transfer is caused by court action, court action being an order from a court of law

affecting legally committed students.

1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

1.4.3 A student who transfers from a public, private, vocational-technical, charter, or choice school to another public, private, vocational-technical, charter, or choice school shall be eligible in the receiving school immediately, except as prohibited by 1.4.10.1, when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public or vocational-technical school, the new legal residence must be in the attendance zone of the receiving school.

1.4.4 Promotion to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted shall be eligible.

1.4.5 If a waiver of the ninety (90) school day ineligibility clause is requested, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the DSSAA Board of Directors to support the request. Documentation should include the following for each specific request:

1.4.5.1 Program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

1.4.5.1.1 Student schedule card.

1.4.5.1.2 Student transcript.

1.4.5.1.3 Current course descriptions from both the sending and receiving schools.

1.4.5.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

1.4.5.1.5 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as

defined in 1.4.8.1 through 1.4.8.4.

See 3 DE Reg 437 (9/1/99)

1.4.5.2 Finances

1.4.5.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses.

1.4.5.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.8.1 through 1.4.8.4.

See 3 DE Reg 437 (9/1/99)

1.4.6 No waiver shall be required for students who transfer after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

1.4.6.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

See 3 DE Reg 437 (9/1/99)

1.4.6.2 The student has not attended class, excluding summer school, or participated in a practice, scrimmage, or contest at the sending school since the close of the previous academic year.

1.4.6.3 The student's legal residence is located in the attendance zone of the receiving school.

1.4.6.4 All other DSSAA eligibility requirements have been met.

1.4.7 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

1.4.8 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the primary reason for his/her transfer is one of the following:

1.4.8.1 To seek a superior team.

1.4.8.2 To seek a team more compatible with his/her abilities.

1.4.8.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

1.4.8.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

1.4.9 If a student transfers at any time during the school year for reasons other than those specified in 1.4.2, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by 1.4.1.

1.4.9.1 If a student transfers with fewer

than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements

1.4.10 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 *Del. C.*, Ch. 4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.6.1, 1.4.6.2 and 1.4.6.4.

1.4.10.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

1.4.11 A student who transfers from a school of choice to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.6.1 through 1.4.6.4.

See 3 DE Reg 437 (9/1/99)

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not receive any form of remuneration for athletic services.

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

1.5.1.3.1 In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/

her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

See 3 DE Reg 437 (9/1/99)

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

See 3 DE Reg 525 (10/1/99)

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

1.5.1.8 Receives an award prohibited by DSSAA for being a member of some athletic organization.

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.0 Use of Influence for Athletic Purposes

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined

by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.3.3 A school employee or Board approved volunteer may conduct an informational presentation at a feeder school provided he/she observes the restrictions specified in 2.3.2.1.

2.4 If the number of applicants under the Delaware

School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

3.0 Non-School Competition

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms or use school equipment.

3.2.2 The school may not provide transportation.

3.2.3 The school may not pay entry fees or provide any form of financial assistance.

3.2.4 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 *Del. C.*, § 122(b)(15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the separate areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the normal school day, that satisfies

an unmet graduation requirement.

4.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.3.2 The final accumulation of credits shall determine eligibility for the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible.

4.3.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

See 3 DE Reg 437 (9/1/99)

4.6 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

5.0 Participation

5.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

5.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

5.1.2 "Hardship" shall be defined as extenuating circumstances which are beyond the control of the student or his/her parent(s) or court appointed legal guardian(s); preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.1 The circumstances must be unusual, unavoidable, and extraordinary. A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 DSSAA Waiver Procedure and 1055 DSSAA Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be

accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.1.3 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade.

5.2 If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

5.2.1 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

5.3 Participation shall be defined as taking part in a school sponsored practice (see 25.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

6.0 Postgraduates/Higher Institutions

6.1 Postgraduates shall not be eligible to participate in interscholastic athletics.

6.1.1 All graduates of recognized senior high schools shall be considered postgraduates.

6.2 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

6.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DSSAA requirements.

7.0 Foreign Exchange Students/Foreign Students

7.1 Notwithstanding 1.2, 1.3, and 1.4, foreign students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

7.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

7.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

7.2 Foreign students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DSSAA eligibility requirements.

7.3 Once enrolled, foreign exchange and other foreign students must comply with all DSSAA eligibility

rules.

7.4 Athletic recruitment of foreign exchange students or other foreign students by a member school or any other entity is prohibited, and any such students recruited shall be adjudged ineligible.

8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the immediately preceding sports season.

8.2.2 If the athlete has been out of school during the preceding term with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding term.

8.2.4 If the athlete has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to practice for five (5) consecutive days due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

9.0 Clarifying Eligibility

9.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

See 3 DE Reg 437 (9/1/99)

11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts between DSSAA member schools and non-member or associate member schools of comparable state associations are required.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier varsity contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the

participating schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

13.0 Licensed Physician

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

See 3 DE Reg 438 (9/1/99)

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible effect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school.

See 3 DE Reg 438 (9/1/99)

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of

standings and playoff eligibility

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

15.0 Reporting Violations

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

16.0 Equivalent Rules

16.1 A member school shall not participate in a scrimmage or contest with any school that is not a member in good standing of DSSAA or a state association comparable to DSSAA.

16.1.1 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.1.1.1 Postgraduate students shall not be allowed to participate.

16.1.2 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.1.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.1.2.1 Postgraduate students shall not be allowed to participate.

16.2 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.3 Member schools shall not participate in a practice, scrimmage, or contest with university, college, or junior college undergraduates.

16.4 This rule shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

16.5 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DSSAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

See 3 DE Reg 438 (9/1/99)

19.0 All-Star Contests

19.1 An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

19.2 Students who have completed their eligibility in a sport may participate in one all-star contest in that sport, if approved by DSSAA, prior to graduation from high school.

19.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DSSAA.

19.4 The all-star contest must be approved by DSSAA in accordance with the following criteria:

19.4.1 The contest shall not be for determining a regional or national champion.

19.4.2 The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

19.4.3 The awards given shall be in compliance with 1.5.

19.4.4 Exceptions to the adopted rules code for the sport shall require the approval of DSSAA.

19.4.5 A full financial report must be filed with the Executive Director within thirty (30) days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$50.00 fine.

19.4.6 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

See 3 DE Reg 439 (9/1/99)

19.5 A student who participates in more than one all-star game or in a non-approved all-star game shall forfeit his/her eligibility for 90 school days.

20.0 Sponsoring Interscholastic Teams

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2)

or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

See 3 DE Reg 439 (9/1/99)

20.2.1 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than twelve (12) participating schools at the varsity level.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 23.0, 24.0, and 32.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.

20.3.2 Level 2 or recognized sport - twelve (12) or more participating schools at the varsity level.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

20.3.3 Level 3 or championship sport - sixteen (16) or more participating schools at the varsity level.

20.3.3.1 Upon petition by the sport committee and adoption of a tournament proposal, DSSAA shall establish a state championship.

20.3.4 Withdrawal of level 2 or level 3 status.

20.3.4.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board of Directors.

21.0 State Championships

21.1 The minimum number of high schools which must sponsor a sport at the varsity level in order for DSSAA to approve a state championship shall be sixteen (16).

21.2 State championship play shall be permitted in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of and/or has the approval of DSSAA.

21.3 All state championships shall be managed by committees established in accordance with Sections 11. and 12. of Article IV of the DSSAA Constitution.

21.3.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the DSSAA Board of Directors for approval.

See 3 DE Reg 439 (9/1/99)

21.3.2 All financial arrangements, including the collection of monies and expenditures, must be approved by the Executive Director

21.4 Championship play in other sports must be confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the DSSAA Board of Directors.

21.5 No member school shall participate in a

post-season contest.

22.0 Certified Coaches

22.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

22.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

See 3 DE Reg 439 (9/1/99)

22.2 Emergency coaches

22.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than 1/2 of the school day.

22.2.2 An individual who meets the requirements of a certified coach as specified in 22.1 but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

22.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

22.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

22.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

22.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

22.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

22.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

See 3 DE Reg 439 (9/1/99)

22.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

22.3 Students who are practice teaching in a member school shall be permitted to assist in all professional

activities during their practice teaching period.

22.4 In addition to the members of the school's regular coaching staff, who must come from 22.1 through 22.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

22.5 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office.

22.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director

22.6 Beginning with the 2000-01 school year, head coaches at all levels of competition shall be required to hold a current certification in adult CPR.

22.6.1 Beginning with the 2001-02 school year, assistant coaches at all levels of competition shall be required to hold a current certification in adult CPR.

See 3 DE Reg 439 (9/1/99)

23.0 Sports Seasons and Practice

23.1 The regular fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.2 The regular winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

See 3 DE Reg 439 (9/1/99)

23.3 The regular spring sports season shall begin on March 1 and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.4 Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day.

Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

See 3 DE Reg 439 (9/1/99)

23.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited, Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

23.5 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

23.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades through 12) who participated in his/her assigned sport at a feeder school.

23.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the

aforementioned players.

23.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

23.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

23.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

23.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

23.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

23.9 A coach who is determined to be in violation of 23.7 or 23.8 shall be suspended from coaching in the specified sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

24.0 Maximum Game Schedules and Designated Sport Season

24.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

Sport	Team Limitations		Individual Limitations	
	Season	Week	Week	ay
Fall				
Cross Country (boys and girls)	16 competition dates	•+3 competition dates	•+3 competition date	
Field Hockey (girls)	16 contests	•3 contests	•3 competition dates	2 halves
Football (boys)	10 contests	1 contest	4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level	
Soccer (boys)	16 contests	•3 contests	•3 competition dates	2 halves
Volleyball (girls)	16 competition dates of which 1 date may involve more than 2 teams	•3 competition dates	•3 competition dates	

Winter

Basketball (boys and girls)	22 contests	•3 contests	•3 competition dates	4 quarters
Swimming (boys and girls)	*16 contests	•3 competition dates	•3 competition dates	
Indoor Track (boys and girls)	12 contests	•+ 3 contests	•+3 contests	
Wrestling (boys)	*18 contests	•3 competition dates	•3 competition dates	5 matches

Spring

Baseball (boys)	18 contests	•3 contests	•3 contests	
Softball (girls)	18 contests	•3 contests	•3 contests	
Golf (boys)	16 competition dates	•3 competition dates	•3 competition dates	
Tennis (boys and girls)	16 contests	•3 contests	•3 contests	
Outdoor Track (boys and girls)	18 competition dates	•+3 competition dates	•+3 competition date	
Lacrosse (boys and girls)	16 contests	•3 contests	•3 competition dates	4 quarters (boys) or 2 halves (girls)
Soccer (girls)	16 contests	•3 contests	•3 competition dates	2 halves

• *The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is not in session for the entire week such as during winter or spring vacation.*

+ A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.

* Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

24.2 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

24.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

24.4 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/competition dates in a week.

24.5 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

24.5.1 Any playoffs to determine state

tournament berths shall be under the control and supervision of the DSSAA tournament committee.

24.6 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

24.7 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

24.8 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

25.0 Practice Sessions

25.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

25.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends. Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.

25.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

25.3 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills, mandatory strength training, etc.

25.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

25.4 Practice sessions shall be limited to two (2) hours on official school days.

25.4.1 Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete.

25.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

25.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

26.0 Awards

26.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

26.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

26.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable.

26.1.3 Member schools and such support groups shall also be permitted to sponsor team banquets and present post-secondary scholarships.

26.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.2.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards that have utilitarian value are prohibited.

26.2.2 Non-profit groups shall also be permitted to sponsor team banquets.

26.3 Non-profit organizations co-sponsoring a tournament shall be allowed to give post-secondary scholarships to participating schools provided they are not awarded on the basis of team or individual performance. Scholarship monies shall be administered in accordance with DSSAA and NCAA regulations.

See 3 DE Reg 440 (9/1/99)

26.4 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.4.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited. The value of the award shall not exceed \$50.00.

See 3 DE Reg 440 (9/1/99)

26.5 Non-symbolic competition awards, regardless of sponsor, shall have a utilitarian value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director

27.0 Boxing

Member schools shall not participate in interscholastic boxing.

28.0 Protests and Complaints

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

29.0 Wrestling Weight Control Code

29.1 Each year, prior to January 15, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his/her duly established weight class. In addition, a wrestler may not compete in the individual state championship or a qualifying tournament in his/her duly established weight class unless the wrestler makes weight in at least fifty (50) percent of his/her conference and non-conference weigh-ins during the regular season.

29.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she last weighed in before that date.

29.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

29.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

29.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the

conference secretary without delay

29.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

29.3 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.

30.0 Use of Officials

30.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

30.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

30.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

30.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest until both requirements have been satisfied in the same season.

30.2.2 Failure to fulfill this obligation within one (1) year shall cause the official to lose varsity officiating status. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

30.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

30.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation clinic, he/she may attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

30.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

30.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

30.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

30.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine.

31.0 Summer Camp and Clinic Sponsorship

31.1 DSSAA does not restrict a student's decision to attend a summer athletic camp. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp which limits membership to their own district, locale, or teams. Coaches employed by a summer athletic camp may not instruct their own athletes.

31.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at summer athletic camps, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

31.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

31.2.2 All applicants shall share equally in the funds provided.

31.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

31.2.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp.

32.0 Sanctions - School Team Competition

32.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

32.1.1 The event shall not be for determining a regional or national champion.

32.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

32.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

32.1.4 Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

32.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate

and such schools shall be subject to approval by the Executive Director

32.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

32.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

32.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

See 3 DE Reg 525 (10/1/99)

32.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

33.0 Coed Teams

33.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

33.1.1 A student shall participate in a particular sport for only one season during each academic year.

33.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

33.2.1 Coed teams shall participate only in the boys' state championship tournament/meet.

33.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

34.0 Non-School Instructional Camps and Clinics

34.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

34.1.1 The student must participate unattached and may not wear school uniforms or use school equipment.

34.1.2 The school may not provide transportation or pay fees.

34.1.3 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

35.0 Open Gym Programs

35.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

35.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

35.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

35.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

See 3 DE Reg 440 (9/1/99)

35.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

35.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

35.1.6 The participants must provide their own workout clothing.

36.0 Conditioning Programs

36.1 A member school may conduct a conditioning program in accordance with the following provisions:

36.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

36.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

36.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

36.1.4 A coach may not provide instruction in sport specific skills or techniques.

36.1.5 Sport specific equipment is prohibited.

36.1.6 The participants must provide their own workout clothing.

37.0 Non-Payment of Fines

A school which does not pay, by July 1, all fines incurred during the school year shall be ineligible to participate in a state championship event in any sport during the following school year until such time as all fines are

paid.

38.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

1052. DSSAA Junior High/Middle School Interscholastic Athletics

1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

1.1 Age

1.1.1 Eighth-grade students who become 15 years of age on or after June 15 in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

1.1.1.1 Permission shall be granted for 15-year old eighth-grade students in a school terminating in the eighth grade who are ineligible for junior high/middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements.

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the junior high/middle school which he/ she represents and must be in regular attendance by September 20.

1.2.1.1 A student who enters school after September 20 shall not be eligible to participate until February 1.

1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.

1.2.2 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics (see

1.4.9).

1.2.3 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.4 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.4.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.5 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

1.2.6 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.

1.3 Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, under authority of a policy of the local board of education, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and subsequently transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and is granted permission to continue attending his/her present school via established district policy for such, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student may be residing

outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.5 A student who is a non-resident of Delaware shall be eligible at a public or charter school if, in accordance with 14 *Del. C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.1.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.2 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

1.4.3 A student who transfers from a public, private, charter or choice school to another public, private, charter, or choice school, except as prohibited by 1.4.7.1, shall be eligible in the receiving school immediately when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public school, the new legal residence must be in the attendance zone of the receiving school.

1.4.4 If a waiver of the ninety (90) school-day ineligibility clause is requested, the parent(s) or court appointed legal guardian(s) is responsible for providing

documentation to the DSSAA Board of Directors to support the request. Documentation should include the following for each specific request:

1.4.4.1 Program of study (a multi-year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

1.4.4.1.1 Student schedule card.

1.4.4.1.2 Student transcript.

1.4.4.1.3 Current course descriptions from both the sending and receiving schools.

1.4.4.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

1.4.4.1.5 Statement from the principal of both the sending and receiving school that the student is not transferring primarily for athletic advantage as described in 1.4.6.1 through 1.4.6.4.

1.4.4.2 Finances

1.4.4.2.1 Proof of extreme financial hardship caused by significant loss of income and/or increased expenses.

1.4.4.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.6.1 through 1.4.6.4.

1.4.5 No waiver shall be required for students who transfer after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

1.4.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

1.4.5.2 The student has not attended class, excluding summer school, or participated in a practice, scrimmage, or contest at the sending school since the close of the previous academic year.

1.4.5.3 The student's legal residence is located in the attendance zone of the receiving school.

1.4.5.4 All other DSSAA eligibility requirements have been met.

1.4.6 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school-day ineligibility clause.

1.4.7 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school-day ineligibility clause if the primary reason for his/her transfer is one of the following:

1.4.7.1 To seek a superior team.

1.4.7.2 To seek a team more compatible with his/her abilities.

1.4.7.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

1.4.7.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

1.4.8 If a student transfers at any time during the school year for reasons other than those specified in 1.4.2, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by 1.4.1.

1.4.8.1 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements

1.4.9 A student who transfers from a public, private, or charter school to a school of choice shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.5.1, 1.4.5.2, and 1.4.5.4.

1.4.9.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

1.4.10 A student who transfers from a school of choice to a public, private, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.5.1 through 1.4.5.4.

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not receive any form of remuneration for athletic services.

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional

tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

1.5.1.3.1 In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp/clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

1.5.1.8 Receives an award prohibited by DSSAA for being a member of some athletic organization.

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this

rule. The suspension shall date from the time of the last offense.

2.0 Use of Influence for Athletic Purpose

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning

sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

3.0 Non-school Competition

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms or use school equipment.

3.2.2 The school may not provide transportation.

3.2.3 The school may not pay entry fees or provide any form of financial assistance.

3.2.4 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 *Del. C.*, § 122 (15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) credits. Two (2) of those credits must be in the separate areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making

satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.2.2 The final accumulation of credits shall determine eligibility for the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible.

4.2.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.4 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

4.5 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

5.0 Participation

5.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

5.1.1 No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or a spring sport or combination of spring sports.

5.1.2 "Hardship" shall be defined as extenuating circumstances which are beyond the control of the student or his/her parent(s) or court appointed legal guardian(s), preclude him/her from completing the academic requirements for promotion within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.1 The circumstances must be unusual, unavoidable, and extraordinary. A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 DSSAA Waiver Procedure and 1055 DSSAA Appeal Procedure. Claims of extended illness,

debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons as specified in 5.1.2.

5.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or a spring sport or combination of spring sports.

5.2.2 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

5.2.3 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.

5.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.

5.4 Participation shall be defined as taking part in a school sponsored practice, (see 24.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

6.0 Grades

The junior high/middle school interscholastic athletic program shall include grades 6 through 8, inclusive.

7.0 Junior High/Middle School and Senior High School Competition

7.1 No junior high/middle school student who has completed a season at the junior high/middle school level shall compete in the same sport at the senior high school level during the same school year.

7.2 A junior high/middle school student who participates in a varsity or subvarsity game at the high school level shall be ineligible to participate at the junior high/middle school level in the same sport.

8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the

following circumstances:

8.2.1 If the athlete has been treated for an injury during the immediately preceding season.

8.2.2 If the athlete has been out of school during the preceding term with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding term.

8.2.4 If the student has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to practice for five (5) consecutive days due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

9.0 Clarifying Eligibility

9.1 In cases of doubt or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 A student not listed on the original eligibility report or subsequent addenda on file in the Executive Director's office shall be ineligible. In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts are required between DSSAA member schools and non-member or associate member schools of comparable state associations.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted for shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

11.3.3A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

13.0 Licensed Physician

13.1 Provision shall be made for a licensed

physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible affect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school.

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances

by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 above shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

15.0 Reporting Violations

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

16.0 Equivalent Rules

16.1 A full member school shall not participate in a scrimmage or contest with an instate school that is not a member in good standing of DSSAA unless the opposing school, as part of a written contract, certifies that its contestants are eligible under DSSAA rules.

16.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.3 An associate member school shall not participate in a scrimmage or contest with an in-state school

that is not a member in good standing of DSSAA unless the opposing school complies with the conditions specified in 16.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.4 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.2. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.5 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.6 Member schools shall not participate in a practice, scrimmage, or contest with university, college, or junior college undergraduates.

16.7 This rule shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

16.8 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DSSAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

19.0 All-Star Contests

19.1 Junior high/middle school students shall not participate in an all-star event until they have completed their high school eligibility in that sport.

20.0 Sponsoring Interscholastic Teams

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing bodies of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgement that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

20.2.1.3 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than seven (7) participating schools.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 22.0, 23.0, and 29.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school

sponsored team.

20.3.2 Level 2 or recognized sport - seven (7) or more participating schools.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

20.3.3 Withdrawal of level 2 status

20.3.3.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition for a period of time as determined by the Board of Directors.

21.0 Certified Coaches

21.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

21.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

21.1.2 All head coaches shall be required to attend the DSSAA rules clinic for their sport or pass an open book rules examination supplied by the DSSAA office.

21.2 Emergency coaches

21.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day.

21.2.2 An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

21.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

21.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

21.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

21.2.4.2 If an acceptable, certified

professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

21.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

21.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

21.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

21.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

21.4 In addition to the members of the school's regular coaching staff, who must come from 21.1 through 21.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

21.5 All head coaches shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office.

21.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director

21.6 Beginning with the 2000-01 school year, all head coaches shall be required to hold a current certification in adult CPR.

21.6.1 Beginning with the 2001-02 school year, all assistant coaches shall be required to hold a current certification in adult CPR.

22.0 Sports Seasons and Practice

22.1 The fall sports season shall begin on August 25 and end not later than December 1.

22.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1.

22.3 The spring sports season shall begin on March 1 and end not later than the last school day.

22.4 Practice for any fall sport shall not begin earlier than August 25. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in

December and practice for any spring sport shall not begin earlier than March 1.

22.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run play "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

22.5 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

22.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

22.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches.

22.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

22.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized

league competition.

22.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

22.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

22.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

22.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

22.9 A coach who is determined to be in violation of 22.7 and 22.8 shall be suspended from coaching in the specified sport at any DSSAA member school for up to 180 school days.

23.0 Maximum Game Schedules and Designated Sport Season

23.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

Sport	Team Limitations		Individual Limitations	
	<u>Season</u>	<u>Week</u>	<u>Week</u>	<u>Day</u>
Fall				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition date	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates of which 1 date may involve more than 2 teams	2 competition dates	2 competition dates	
Winter				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	*10 contests	2 competition dates	2 competition dates	5 matches

Spring

Baseball (boys)	12 contests	2 contests	2 contests
Softball (girls)	12 contests	2 contests	2 contests
Tennis (boys and girls)	12 contests	2 contests	2 contests
Outdoor Track (boys and girls)	10 competition dates	+2 competition dates	+2 competition dates
Soccer (girls)	12 contests	2 contests	2 competition dates 2 halves

+ A team may not participate in two different cross country or outdoor track meets on the same day.

*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

23.2 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three (3) contests/competition dates in a week.

23.3 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

23.4 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.5 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

24.0 Practice Sessions

24.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

24.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends. Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.

24.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

24.3 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills, and mandatory strength training.

24.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

24.4 Practice sessions shall be limited to two (2) hours on official school days.

24.4.1 Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete.

24.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

24.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

25.0 Awards

25.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

25.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

25.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms and similar items if properly inscribed (reference to the team or individual accomplishment) are also acceptable.

25.1.3 Member schools and such support groups shall also be permitted to sponsor team banquets.

25.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual

accomplishments with the approval of the administrative head of the school.

25.2.1 The awards shall have symbolic value only. Awards that have utilitarian value are prohibited.

25.2.2 Non-profit groups shall also be permitted to sponsor team banquets.

25.2.3 Tournament sponsors shall be allowed to present the members of participating teams with a complimentary item(s) in accordance with 1.5.1.5.

25.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.3.1 The awards shall have symbolic value only. Awards with utilitarian value are prohibited. The value of the award shall not exceed \$50.00.

25.4 Non-symbolic competition awards, regardless of sponsor, shall have a utilitarian value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director.

26.0 Boxing

Member schools shall not participate in interscholastic boxing.

27.0 Protests and Complaints

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

28.0 Wrestling Weight Control Code

28.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his duly established weight class.

28.2 The weight classifications shall be as follows:

76 lbs.	100 lbs.	124 lbs.	148 lbs.
82 lbs.	106 lbs.	130 lbs.	155 lbs.
88 lbs.	112 lbs.	136 lbs.	165 lbs.
94 lbs.	118 lbs.	142 lbs.	250 lbs.
		(minimum weight 164 lbs.)	

28.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

28.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director of DSSAA. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay

28.5 Schools which desire to conduct their wrestling program at a time other than the season specified in 23.1 must request permission from the Executive Director.

28.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

28.6 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.

29.0 Use of Officials

29.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

29.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director

29.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

29.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination shall cause the official to be placed on probation and to lose his/her eligibility to officiate in a state tournament contest until both requirements have been satisfied in the same season.

29.2.2 Failure to fulfill this obligation within one (1) year shall cause the official to lose varsity officiating status. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

29.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

29.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation clinic, he/she may attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

29.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

29.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

29.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

29.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine.

30.0 Summer Camp and Clinic Sponsorship

30.1 DSSAA does not restrict a student's decision to attend a summer athletic camp. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp which limits membership to their own district, locale, or teams. Coaches employed by a summer athletic camp may not instruct their own athletes.

30.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at summer athletic camps, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

30.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

30.2.2 All applicants shall share equally in the funds provided.

30.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

30.2.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp.

31.0 Sanctions – School Team Competition

31.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

31.1.1 The event shall not be for determining a regional or national champion.

31.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

31.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

31.1.4 Non-school event organizers shall

submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

31.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

31.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

31.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

31.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

31.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

32.0 Coed Teams

32.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

32.1.1 A student shall participate in a particular sport for only one season during each academic year.

32.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

32.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

33.0 Non-School Instructional Camps and Clinics

33.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

33.1.1 The student must participate unattached and may not wear school uniforms or use school equipment.

33.1.2 The school may not provide transportation or pay fees.

33.1.3 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

34.0 Open Gym Programs

34.1 A member school may open its gymnasium or other facility for informal, recreational

activities in accordance with the following provisions:

34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

34.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

34.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

34.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

34.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

34.1.6 The participants must provide their own workout clothing.

35.0 Conditioning Program

35.1 A member school may conduct a conditioning program in accordance with the following provisions:

35.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

35.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

35.1.4 A coach may not provide instruction in sport specific skills or techniques.

35.1.5 Sport specific equipment is prohibited.

35.1.6 The participants must provide their own workout clothing.

36.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

1053. DSSAA Waiver Procedure

1.0 A waiver request shall be submitted on the appropriate form by the principal or headmaster of the school involved and a copy forwarded to the chief school officer.

1.1 The waiver request form must be received by the Executive Director at least twenty-one (21) calendar days before the next regularly scheduled meeting of the DSSAA Board of Directors in order to be placed on the agenda for that meeting.

1054. DSSAA Investigative Procedure

1.0 The following investigative procedure shall be followed when the DSSAA office receives information indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of DSSAA.

1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.

1.2 Permission shall be obtained from the administrative head of the member school to interview students and/or staff members.

1.3 Each person interviewed shall be informed of the nature of the investigation.

1.4 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).

1.5 When immediate punitive action by the Executive Director is necessary, as authorized under Article IV, Section 8, of the DSSAA Constitution, the action taken shall be stated in writing and shall be accompanied by a copy of 1055 DSSAA Appeal Procedure.

1.6 When charges are to be presented to the DSSAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

1055. DSSAA Appeal Procedure

1.0 Decisions of the Executive Director, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed to the DSSAA Board of Directors. Member schools may appeal decisions of the DSSAA Board of Directors to the State Board of Education.

1.1 Initiation of Appeal

1.1.2 Whenever a right of appeal of a decision to the DSSAA Board of Directors is provided, an aggrieved person (appellant) who is under the regulatory authority of DSSAA and who has, in fact, suffered a direct

injury due to the decision, shall begin the appeal procedure by serving a Notice of Appeal, setting forth the grounds for the appeal, upon the Executive Director. Said Notice of Appeal shall be served by certified mail within thirty (30) calendar days after written notice to the appellant of the decision from which he or she has the right of appeal de novo.

1.2 The Executive Director shall docket any appeal received for hearing before the Board of Directors at a regularly scheduled meeting or special meeting of the Board, which shall be no later than thirty (30) calendar days after the receipt of the notice of appeal.

2.0 DSSAA Hearing Procedure

2.1 Decisions of the Executive Director may be appealed de novo to the DSSAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics. The Board of Directors shall prepare proposed action. If no exceptions, comments, arguments, or appeals respecting a proposed order are submitted in writing to the State Board of Education within thirty (30) calendar days of the date of the proposed order, it shall become final.

2.2 The procedures listed below shall be followed for hearings or fact finding conferences before the DSSAA Board of Directors.

2.2.1 The Chairperson or his/her designated representative shall be the hearing officer.

2.2.2 The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.

2.2.3 All parties to the appeal may be represented by counsel.

2.2.4 The Executive Director shall note in the minutes of the meeting the names of the parties appearing and their counsel if they are represented.

2.2.5 The DSSAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

2.2.6 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least seven (7) days prior to the hearing date. Such party shall be liable for the costs of said reporter.

2.2.7 Method of proceeding

2.2.7.1 The parties to the hearing may rest upon their statements, affidavits, and briefs.

2.2.7.2 The parties may elect to argue before the Board of Directors the issues raised in their statements by notice to the Executive Director in writing at least five (5) days prior to the hearing date.

2.2.7.3 The parties may elect to supplement their statements, affidavits, and briefs by the testimony of witnesses but such election shall be in writing, shall specify the names of witnesses to be called and the approximate amount of time necessary for said testimony,

and shall be served upon the Executive Director at least three (3) days prior to the hearing date.

2.2.8 All evidence is admissible which is relevant, material, reliable, and probative but which is not unduly repetitious or cumulative.

2.2.9 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.

2.2.10 Any person who testifies as a witness shall be subject to cross examination by the parties in an order as determined by the hearing officer.

2.2.11 Any witness is subject to examination by members of the Board of Directors.

2.2.12 Any documents to be introduced into evidence shall be marked by the Executive Director and shall be made part of the record of the hearing.

2.2.13 The order of presentation, when a hearing is requested, shall be as follows:

2.2.13.1 The appellant may offer a statement and/or testimony in his/her behalf.

2.2.13.2 The appellee may offer a rebuttal argument and/or testimony in his/her behalf.

2.2.13.3 The appellant shall then have an opportunity for rebuttal.

3.0 Procedures for Exceptions to the State Board of Education

3.1 Notice of exceptions, comments, arguments, or appeals to the State Board of Education respecting any proposed order of the DSSAA Board of Directors shall be filed with the Secretary of Education no later than thirty (30) calendar days after the date of the proposed order. Any proposed order shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See regulations for the conduct of hearings before the State Board of Education pursuant to 14 Delaware Code §1058)

1056. Recognition of Officials' Association

1.0 An official's association which desires to officiate middle school and/or high school contests shall request recognition and approval from DSSAA in accordance with the procedure described below.

1.1 Submit the following documents to the DSSAA Officials' Committee:

1.1.1 A letter of request indicating the association's willingness to abide by DSSAA rules and regulations.

1.1.2 A brief history of the association.

1.1.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

1.1.4 A description of the association's evaluation and rating system.

1.1.5 A description of the association's

recruiting and training programs for new members.

1.1.6 A membership roster indicating the number of years of experience at the subvarsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association.

1.1.7 If applicable, letters of recommendation or names of references from leagues which the association has serviced during the past year.

1.2 The Officials' Committee shall review the aforementioned documents and, if necessary, meet with the officers of the association to discuss their petition.

1.3 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

1.4 The Officials' Committee shall report its findings to the DSSAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

1.5 The president of the officials' association or his/her designee shall petition the DSSAA Board of Directors and the Board shall render a decision.

1.6 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MENTAL RETARDATION

Statutory Authority 31 Delaware Code,
Section 505 (31 Del.C. 505)

PUBLIC NOTICE DMR Eligibility Criteria

In compliance with the State's Administrative Procedures Act (APA – Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS)/Division of Mental Retardation is amending its eligibility.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than June 1, 2000, at the DMR Administrative Office, Jesse Cooper Building, Federal Street, Dover, DE 19903, attention Susan Morrison Smith. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Division of Mental Retardation office will be available for public

inspection in the DMR Administrative Office at the address given above. Please call (302) 739-4386, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

REVISION:

~~“Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.”~~

The Division of Mental Retardation provides services to those individuals whose disability meets all of the following conditions:

(A)(i) is attributable to mental retardation (1992 AAMR definition) and/or (ii) Autism (DSM IV) and/or (iii) Prader Willi (documented medical diagnosis) and/or (iv) brain injury (individual meets all criteria of the 1992 AAMR definition including age manifestation) and /or (v) is attributable to a neurological condition closely related to mental retardation because such condition results in an impairment of general intellectual functioning and adaptive behavior similar to persons with mental retardation and requires treatment and services similar to those required for persons with impairments of general intellectual functioning;

(B) is manifested before age 22

(C) is expected to continue indefinitely;

(D) results in substantial functional limitations in 2 or more of the following adaptive skill areas

1) communication;

2) self-care;

3) home living;

4) social skills;

5) community use;

6) self-direction;

7) health and safety

8) functional academics;

9) leisure;

10) work; and

(E) reflects the need for lifelong and individually planned services.

Intellectual functioning and adaptive behavior is determined by using established standardized instruments approved by the Division.

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Statutory Authority: 4 Delaware Code,
Section 304 (4 Del.C. 304)

Please take notice, pursuant to 29 Del.C. Ch. 101 and 4 Del.C. Ch. 3, the Delaware Alcoholic Beverage Control Commission proposes a new Rule.

A public hearing will be held on the proposed Rule on Wednesday, May 31, 2000 at 12:30 p.m. in the Third Floor Conference Room, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801. The purpose of the hearing will be to receive public comments on proposed Rule 77 in order that the Commission may vote to adopt, amend or reject said Rule at its May 31, 2000 meeting. The Commission will receive and consider input in writing from any person regarding proposed Rule 77. Written comments should be submitted to the Commission from May 1, 2000 through May 30, 2000, to Donald J. Bowman, Executive Secretary of the Delaware Alcoholic Beverage Control Commission, at the above address. For copies of the proposed Rule, please contact Joanne Episcopo at the above address or by calling (302) 577-5222. To make comments at the public hearing, please contact Donald J. Bowman, Executive Secretary, at the above address or phone number.

Beverly Bell, Commissioner
Herbert Schaefer, Commissioner
Kenneth Edwards, Commissioner

Attest:

Donald J. Bowman, Sr
Executive Secretary

Rule 77

A Rule Pertaining to the License of Direct Shippers

I. Purpose

For the purpose of fulfilling the requirements set forth by the General Assembly in Section 1 of 72 Del.Laws, c. 230, to be codified at 4 Del.C. §526 effective June 1, 2000, this rule is to set forth the applicable license fee for a Direct Shipper and to establish the procedure for collection and payment of taxes, and for delivery of orders via a licensed direct shipper

II. Authority

The Delaware Alcoholic Beverage Control Commission is authorized pursuant to 4 Del.C. §304(a)(1) and (2) to adopt rules governing the time, place and manner in which

alcoholic beverages are sold and dispensed throughout the State.

III. Applicability

This rule applies to all persons who are licensed as direct shippers by the Commission and all licensed wholesalers, licensed retailers, and Delaware residents who deliver or receive sparkling wine, still wine, and/or beer obtained via licensed direct shippers as set forth in 4 Del.C. §526.

IV. License Fee

The license fee for a direct shipper is \$250.00, which is an amount that reasonably reflects the costs necessary to defray the expenses of the Commission's service and activities in connection with 4 Del.C. §526.

V. Taxes

Pursuant to 4 Del.C. §581(e), all persons licensed pursuant to 4 Del.C. §526 shall pay to the State of Delaware, Division of Revenue, the tax on such wine and beer sold to Delaware residents at the rates set forth in 4 Del.C. §581(d). Collection and payment of such taxes shall be in a manner consistent with Title 4 of the Delaware Code and the Commission's Rules and Regulations.

VI. Delivery

Wine and beer ordered through a licensed direct shipper will be delivered by a Delaware off-premises retail licensee to a Delaware resident consistent with Title 4 of the Delaware Code and the Commission's Rules and Regulations. In order to receive wine or beer from the retail licensee, the Delaware resident will present to the retail licensee a valid Delaware drivers license, with photograph identification, that indicates the resident is 21 years of age or older.

VII. Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.

VIII. Effective Date

This rule shall be effective June 1, 2000.

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 **Del.C.** 209(a))

IN THE MATTER OF THE SALE, RESALE, AND OTHER PROVISIONS OF INTRASTATE TELECOMMUNICATIONS SERVICES (OPENED MAY 1, 1984; REOPENED NOVEMBER 17, 1998	PSC REGULATION DOCKET NO. 10
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IN THE MATTER OF THE DEVELOPMENT OF REGULATIONS FOR THE FACILITATION OF COMPETITIVE ENTRY INTO THE TELECOMMUNICATIONS LOCAL EXCHANGESERVICE MARKET (OPENED NOVEMBER 21, 1995; REOPENED NOVEMBER 17, 1998	PSC REGULATION DOCKET NO. 45
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ORDER NO. 5391

AND NOW, to-wit, this 28th day of March, 2000;

WHEREAS, in Public Service Commission ("PSC" or the "Commission") Order No. 3283 (June 18, 1991) entered *In the Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services*, PSC Regulation Docket No. 10, the Commission issued its "Rules for the Provision of Competitive Intrastate Telecommunications Services" to govern telecommunications carriers offering intrastate telecommunications services for public use within the State; and

WHEREAS, by PSC Order No. 4468 (April 8, 1997) issued *In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45, the Commission issued "Interim Rules Governing Competition in the Market for Local Telecommunications Services" to govern competitive local exchange telecommunications services within the State; and

WHEREAS, the Commission Staff recommended amendment of both the Rules for the Provision of Competitive Intrastate Telecommunications Services (the "Docket 10 Rules") and the Rules Governing Competition in the Market for Local Telecommunications Services (the "Docket 45 Rules") to lessen regulatory burdens on the telecommunications carriers, as well as the Commission; to reflect the changing regulatory environment; to harmonize the provisions of the Docket 10 and 45 Rules; and to conform, where practicable, the requirements of these rules with other regulatory provisions; and

WHEREAS, by PSC Order No. 4949 (Nov. 17, 1998), the Commission reopened the proceedings captioned *In the*

Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services, PSC Regulation Docket No. 10 and *In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Services Market*, PSC Regulation Docket No. 45, to consider amendment of the Rules promulgated therein, in a single consolidated proceeding; and

WHEREAS, the Commission arranged for the publication of notice of the proceeding and of the text of the proposed amended Docket 10 and 45 Rules, as well as the text of Rules in their current form, in the Register of Regulations as required by 29 *Del. C.* §§ 1133 and 10115 and also arranged for publication of legal notice of the proceeding in the *The News Journal* and *Delaware State News* newspapers in accordance with 29 *Del. C.* § 10115; and

WHEREAS, the Hearing Examiner, designated by the Commission, received comments and suggestions for further or differing proposed revisions to the Rules and also conducted public hearings on the proposed amendments, at which participants were given the opportunity to present evidence and comments, cross-examine witnesses, and make further arguments; and

WHEREAS, on September 7, 1999, the Hearing Examiner issued a Report to the Commission recommending the Commission adopt certain proposed amendments to the Docket 10 and 45 Rules, which Report and Recommendations the Commission considered at its October 26, 1999 public meeting; and

WHEREAS, by PSC Order No. 5277 (Nov. 16, 1999), the Commission identified specific policies to be implemented by any revised Rules and remanded the proceeding to the Hearing Examiner for further consideration, including the opportunity for further comment by participants; and

WHEREAS, after receiving further comments and proposals and conducting a further evidentiary hearing, the Hearing Examiner issued a second report to the Commission recommending that the Commission adopt a consolidated set of *Rules for the Provision of Telecommunications Service* and proposing the text for such a unitary set of Rules; and

WHEREAS, the Commission thereafter afforded the participants an opportunity to submit written exceptions to the Report and Recommendations of the Hearing Examiner; and

WHEREAS, the Commission considered the Hearing Examiner's Report, the Hearing Examiner's Proposed Rules, and the exceptions of the participants at its public meeting of February 28, 2000 and, after deliberations, deemed it appropriate to propose repeal of the present Docket 10 and 45 Rules in their entirety and adoption of consolidated *Rules for the Provision of Telecommunications Services* as have been proposed by the Hearing Examiner, but with certain

modifications approved by the Commission; and

WHEREAS, given that Rules for the Provision of Telecommunications Services, as now being proposed, differ, in substantive nature, from the proposed revisions previously published in the Delaware Register of Regulations, the Commission believes it necessary, in light of 29 Del. C. § 10118(c), to reinitiate the procedures for amendment of agency regulations as set forth in §§ 10113-10119 and to withdraw the previously proposed revisions;

Now, therefore, IT IS HEREBY ORDERED:

1. That the Commission proposes to amend its rules and regulations by: (a) repealing, in their entirety, the "Interim Rules Governing Competition in the Market for Local Telecommunications Services," adopted in PSC Order No. 4468 (April 8, 1997); (b) repealing in their entirety, the "Rules for the Provision of Competitive Intrastate Telecommunications Services," as adopted in PSC Order No. 3283 (June 18, 1991); and (c) adopting Rules for the Provision of Telecommunications Service as set forth in Attachment 3 to Exhibit "A" of this Order.

2. That the Commission withdraws the proposed revisions adopted in PSC Order No. 4949 (Nov. 17, 1998) in light of the action proposed in paragraph one above.

3. That the Commission seeks public comment and input concerning its proposal to repeal the present Docket 10 and 45 Rules and to adopt the proposed Rules for the Provision of Telecommunications Services and, for this purpose, to comply with the requirements of 2 Del. C. §§ 1133 and 10115, the Commission hereby issues the Notices of Proposed Repeal and Adoption of Rules for the Provision of Telecommunications Services attached hereto as Exhibits "A" and "B" for publication, respectively, in the Register of Regulations and in two (2) newspapers of general circulation in the State.

4. That the Secretary shall transmit the Notice of Proposed Repeal and Adoption of Rules for the Provision of Telecommunications Services attached as Exhibit "A," together with copies of the existing text of the Docket 10 and 45 Rules and the proposed Rules for the Provision of Telecommunications Services, to the Registrar of Regulations for publication in the Register of Regulations on May 1, 2000, as required by 29 Del. C. 10115. In addition, the Secretary shall, contemporaneous with such transmittal, cause a copy of the Notice attached as Exhibit "A" and the existing Docket 10 and 45 Rules and the proposed Rules for the Provision of Telecommunications Services to be sent by United States Mail to: (1) all prior participants in this proceeding; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

5. That the Secretary shall cause the publication of the Notice of Proposed Repeal and Adoption of Rules for the

Provision of Telecommunications Services attached hereto as Exhibit "B" to be made in The News Journal and the Delaware State News newspapers on the following dates, in two column format, outlined in black:

May 1, 2000 (for The News Journal)

May 1, 2000 (for the Delaware State News)

6. That the Commission will conduct a public hearing on the proposed repeal of the present Docket 10 and 45 Rules and the adoption of the proposed Rules for the Provision of Telecommunications Services during its regular public meeting at its Dover office on Tuesday, June 6, 2000, beginning at 1:00 PM.

7. That the telecommunications service providers regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

8. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/ Robert J. McMahon

Chairman

/s/ Joshua M. Twilley

Vice Chairman

/s/ Arnetta McRae

Commissioner

/s/ Donald J. Puglisi

Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson

Secretary

EXHIBIT "A"

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE SALE, RESALE, AND OTHER PROVISION OF INTRASTATE TELECOMMUNICATIONS SERVICES (OPENED MAY 1, 1984; REOPENED NOVEMBER 17, 1998) | PSC REGULATION DOCKET NO. 10
IN THE MATTER OF THE DEVELOPMENT OF REGULATIONS FOR THE FACILITATION OF COMPETITIVE ENTRY INTO THE TELECOMMUNICATIONS LOCAL | PSC REGULATION DOCKET NO. 45

EXCHANGESERVICE MARKET |
 (OPENED NOVEMBER 21, 1995; |
 REOPENED NOVEMBER 17, 1998 |

**NOTICE OF PROPOSED REPEAL AND ADOPTION
 OF RULES FOR THE PROVISION OF
 TELECOMMUNICATIONS SERVICE**

The Delaware Public Service Commission (the "PSC" or the "Commission") proposes to repeal its existing "Rules for the Provision of Competitive Intrastate Telecommunications Services" first adopted *In the Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services*, PSC Regulation Docket No. 10 ("the Docket 10 Rules") and its existing "Interim Rules Governing Competition in the Market for Local Telecommunications Services" first adopted *In the Matter of The Development of Regulations For The Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45 (the "Docket 45 Rules"), and to adopt in their place a consolidated set of *Rules for the Provision of Telecommunications Service*. The proposed new Rules are intended to reflect the changes in the regulatory environment since the adoption of the Docket 10 and 45 Rules; to consolidate the Docket 10 Rules and Docket 45 Rules into a single set of rules; and to harmonize the provisions of these Rules with other regulatory provisions, where practicable. The proposed new Rules will, overall, lessen the regulatory burdens and costs, both to regulated carriers and the PSC.

Significant proposed changes to the Rules include provisions: allowing carriers to file price lists in place of tariffs; eliminating the requirement that tariffs (or price lists) be accompanied by cost studies; allowing changes to existing rates to be implemented upon three days notice, rather than the current fourteen or five days notice; adding a new rule to govern customer election of preferred carriers consistent with the Federal Communications Commission's preferred carrier election rules; and adding a new rule governing enforcement of the *Rules for the Provision of Telecommunications Services*.

The PSC derives its legal authority to make and amend regulations governing the conduct of public utilities from 26 Del. C. §§ 201 and 209. In addition, under 26 Del. C. § 703, the PSC is authorized to modify its regulation of telecommunications services where such modifications will, among other things, promote efficiency in public and private resource allocations and encourage economic development. The process under which the PSC acts to make and amend regulations is set forth by 29 Del. C. §§ 10111 through 10119.

The text of the present Docket 10 Rules is attached as Attachment 1. The text of the present Docket 45 Rules is

attached as Attachment 2. The text of the proposed Public Service Commission *Rules for the Provision of Telecommunications Services* is attached hereto as Attachment 3. The text of the existing and proposed Rules, along with summaries of the proposed changes, may be inspected at the Commission's office, located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 during the Commission's normal business hours, Monday to Friday, 8:00 AM to 4:30 PM. Copies of the present and proposed Rules are available at a fee of \$0.25 per page. The present and proposed rules may also be inspected and copied at the Commission's website - <http://www.state.de.us/govern/agencies/pubserv/delpsc.htm>.

The PSC solicits written comments, compilations of data, briefs, or other written materials addressing repeal of the Docket 10 Rules and Docket 45 Rules and adoption of the proposed *Rules for the Provision of Telecommunications Services*. Twelve (12) copies of such written materials shall be filed with the Commission at its office at the above address on or before May 30, 2000. In addition, any comments should include proposed text of any further or alternate amendments supported by the party submitting comments. The Public Service Commission shall conduct a public hearing upon the proposed repeal of the Docket 10 Rules and Docket 45 Rules and adoption of the proposed *Rules for the Provision of Telecommunications Services* and all comments and materials received on June 6, 2000, commencing at 1:00 PM at the Commission's Dover office. Persons who wish to participate in such hearing should notify the Commission in writing by May 30, 2000.

The repeal of the present Docket 10 and Docket 45 Rules and adoption of the new *Rules for the Provision of Telecommunications Services* proposed in this notice supersede the proposed revisions in the Docket 10 and Docket 45 Rules previously noticed in 2 DE Reg. 946-959 (Dec. 1998).

Telecommunications service providers subject to the jurisdiction of the Public Service Commission are notified that they may be charged for the costs of this proceeding under 2 Del. C. § 114.

Individuals with disabilities who wish to participate in these proceedings may contact the Commission to discuss auxiliary aids or services needed to facilitate such participation. Contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll free number is 800-282-8574.

Persons may also obtain more information by contacting the Commission at (302) 739-4247. That number can also be used for Text Telephone Calls. Inquiries can also be sent by Internet e-mail to cmcdowell@state.de.us.

ATTACHMENT 1**DELAWARE PSC RULES
FOR THE PROVISION OF COMPETITIVE
INTRASTATE TELECOMMUNICATIONS
SERVICES****Applicability:**

Any person (carrier) offering intrastate telecommunications services for public use within the State of Delaware (originating and terminating within the State, without regard to how the person decides to route the traffic) is subject to the regulation of the Public Service Commission (hereafter, "Commission") of the State of Delaware.

Persons subject to these regulations (i.e., carriers offering service for public use) include resellers of **WATS** and other bulk telecommunications services and facilities-based carriers. Persons providing telephone service through customer owned, coin operated (or pay) telephones (**COCOTS**) are governed by the Commission Rules in Regulation Docket No. 12 regarding (**COCOTS**) as the same may from time to time be amended. The Commission reserves the right to exempt any person otherwise subject to these Rules from the operation of any portion of such rules for good cause shown after notice and hearing. To the extent that existing tariffs of The Diamond State Telephone Company as of the effective date of these Rules establish rules and regulations inconsistent with these Rules then, and in that event, the tariff shall control.

Rule 1 - Definitions

a. "**COCOT**" means Customer Owned, Coin Operated (i.e., pay) Telephone.

b. "**TELECOMMUNICATION SERVICE**" OR "**TELEPHONE SERVICE**" means the transmittal of information, by means of electronic or electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities ancillary thereto, equipment, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission including directory, information and operator service. "Telephone Service" does not include, however:

1. the rent, sale, or lease, or exchange for other value received, of customer premises equipment except for customer premises equipment owned or provided by a telecommunications carrier certificated prior to the effective date of these Regulations and only then to the extent that the regulation of its provision is not Federally preempted.

2. telephone or telecommunications answering services, paging services and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light

transmission.

3. Community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment services with no more than incidental subscriber interaction required for selection of such entertainment service.

c. "**REGULATED TELECOMMUNICATIONS CARRIERS**" - means persons who provide telephone service for public use within the State of Delaware. For purposes of regulation by the Delaware Public Service Commission the term "Regulated Telecommunications Carrier" specifically does not include:

1. telephone service that is provided by or owned and operated by any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.

2. a company which provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public.

3. providers of telephone service by either primarily cellular technology or by domestic public land mobile radio service.

d. "**INTRASTATE**" means telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.

Rule 2 - Certification Requirement. All persons (carriers) wishing to provide public intrastate telecommunications services within the State of Delaware are required to file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity. Such application shall contain all the information and exhibits, hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately service the public interest and that the public convenience and necessity requires or will require the operation of such business.

Rule 3 - Notice. Notice of the filing of such an application shall be given by the Applicant at the time of filing to each Commission-certificated telephone company (excluding each holder of a **COCOT** Certificate), the Public Advocate, and to such other entities as may be required by the Commission. Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be

prescribed by the Commission.

Rule 4 - License Requirement. Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including having received all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.

Rule 5 - Identification and Billing of Intrastate and Interstate Traffic. Persons (carriers) seeking to provide intrastate telecommunications service within the State of Delaware shall be required in their filings to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate Local Exchange Company for access at its prevailing access charge rates. If adequate means of categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the local exchange company for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher access charges.

Rule 6 - Additional Requirements. Applicants shall be required to present substantial evidence supporting their financial, operational and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:

a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

b. Brief narrative description of Applicant's proposed business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.

c. Three year construction, maintenance, engineering and financial plans for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such services.

d. Relevant operational experience of each principal officer responsible for Delaware operations.

e. Specific description of Applicant's engineering and technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.

f. Description and map of the Applicant's owned, leased, and optioned facilities existing and planned to exist within the State of Delaware in the next three years. Also,

map showing points of presence within the State of Delaware. All such descriptions and maps shall at all times be kept current and are to be updated as changes are known to the Applicant during the processing of the application and thereafter if the application is approved.

g. If the applicant does not require deposits, advance payments, prepayments, financial guarantees or the like from customers and charges only for service after it has been provided, then no bond shall be required. Otherwise, applicant shall file a bond with a corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The Bond need not be filed with the application but no certificate will be issued to an Applicant and no Applicant may commence business until Applicant files such Bond with the Commission. The amount of the Bond will be the **greater** of (1) 150% of the projected balance of deposits and advances at the end of three years of operations or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holder of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three years will be at the discretion of the Commission which upon application may dispense with the Bond requirement for good cause shown.

h. Copies of State Business License issued by Delaware Division of Revenue.

Rule 7 - Tariffs and Cost Studies. Each application for a Certificate of Public Convenience and Necessity shall include proposed initial tariffs, rules, regulations, terms and conditions of service specifically adapted for the State of Delaware. Initial tariffs shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to enter the Delaware market for each of the proposed services. Copies of Applicant's tariffs, and terms and conditions of service in other jurisdictions must be provided to the Commission upon request. Applicant's tariffs must include specific policies for customer deposits and advances, for prompt reconciliation of customer billing problems and complaints, and for timely correction of service problems. Applications must provide and keep current the name, address and telephone number of Applicant's Delaware Resident Agent.

Rule 8 - New Options or Offerings.

a. **Competition exists** - Persons (carriers) seeking to introduce a service option or offering under this section shall file information sufficient to establish the existence of actual

competition for the services and customer categories to which the tariff applies.

After initial certification, a person (carrier) may introduce new options or offerings ten (10) days after making a tariff filing with the Commission. A change to an existing tariff can be implemented upon fourteen (14) days notice for price increases and five (5) days notice for price decreases. The tariff filing shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change.

b. **Competition does not exist** - After initial certification, a person (carrier) may introduce new options or offerings, or change an existing tariff, 60 days after making a tariff filing with the Commission. The tariff filing shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change. New options, offerings or tariff changes may be suspended in appropriate cases but normally will be allowed to take effect upon 60 days notice; however, the Commission may for good cause shown waive this requirement and allow the tariffs to go into effect upon shorter notice.

Rule 9 - Abandonment or Discontinuation of Service. No person (carrier) shall abandon or discontinue service, or any part thereof, established within the State of Delaware without prior Commission approval and without having previously made provision, approved by the Commission, for payment of all relevant outstanding liabilities (deposits) to customers within the State of Delaware.

Rule 10 - Reports to be provided to the Commission. All persons (carriers) certificated to provide Intrastate telephone service for public use after the effective date of these Rules shall provide such information concerning Delaware operations to the Public Service Commission as the Commission may from time to time request.

a. The accounting system to be used is the Uniform System of Accounts of the Federal Communications Commission or other uniform system of account previously approved in writing by the Chief Accountant of the Commission.

b. All reports required by these rules to be submitted to the Commission shall be attested to by an officer or manager of the carrier, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in

charge of the carrier's operation.

c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the carrier:

1. Annual reports: one hundred twenty (120) days after the end of the reported period.

2. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

d. The annual report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware, (ii) the information used to determine the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

1. Intrastate revenues (net of uncollectibles) by service category;

2. Intrastate access and billing and collection cost by service category;

3. Total number of customers by service category;

4. Total intrastate minutes of use by service category;

5. Total intrastate number of calls by service category;

6. A description of service offered;

7. A description of each complaint received by service category (in the form of a single Complaints Log); and,

8. Verification of deposits, customer advances, the bond requirement and the bond with surety.

NOTE: All reports filed pursuant to the requirement of this section may be deemed to be non-public records within the contemplation of the exemption from public record status accorded by 29 Del. C. § 10002 (d)(2) for trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature. Such reports to receive confidential treatment must be clearly and conspicuously marked on the title page as containing proprietary information. Each page with the report containing information deemed by the Company to be proprietary in nature shall be so marked.

Rule 11 -Discrimination Prohibited. No person (carrier) shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware. The

Commission directs that the operating rule shall be service pursuant to tariff. If, in specific instances, a carrier wishes to provide service pursuant to contract as a response to direct competition, that carrier is required to demonstrate affirmatively that (i) the request is in response to actual rather than potential competition and (ii) that the proposed contract structure and rates are at least equal to incremental cost.

Any finding of unreasonable discrimination shall be grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission as well as the imposition of monetary and other penalties pursuant to 26 Del. C. Sections 217, 218.

Rule 12 -Suspension or Revocation of Certificate.

Excessive subscriber complaints against a person (carrier) shall be a basis for suspension or revocation of a carrier's Certificate of Public Convenience and Necessity if, after hearing, the Commission determines such complaints to be meritorious. In all proceedings, the Commission shall give to the person (carrier) notice of the allegations made against it and afford the carrier with an opportunity to be heard concerning those allegations, prior to the suspension or revocation of the carrier's Certificate of Public Convenience and Necessity or other formal action. The burden of establishing the adequate provision of service is upon the utility.

Rule 13 -Blockage. Persons (carriers) who intentionally or otherwise carry intrastate telecommunications traffic within the State of Delaware on facilities or equipment available to the public are required:

a. To file for a Certificate of Public Convenience and Necessity under these rules, unless already certified by the Commission; or

b. To immediately block such intrastate traffic so that certification is no longer required.

Rule 14 -Service Quality. All persons subject to these Rules shall provide telephone service in accordance with such Telephone Service Quality Regulations as the Commission has adopted in PSC Regulation Docket No. 20, Order No. 3232. An Applicant seeking to be exempted from any portion of those Rules should file an appropriate application for exemption with the Commission, pursuant to Rule 1.2.3 of the rules adopted by the Commission in Order No. 3232 (PSC Regulation Docket No. 20).

Upon a Commission determination that a specific service of a person (carrier) meets the requirements of Rule 8.a establishing the existence of actual competition, then the shortened notice requirements in Rule 8.a shall apply to that specific service of that person (carrier) and the 60-day notice requirement of Rule 3.5.1.G, as adopted in the Commission's Order No. 3232 (Docket No. 20) shall no longer apply to it,

pending future Commission action.

A T T A C H M E N T 2 DELAWARE PUBLIC SERVICE COMMISSION INTERIM RULES GOVERNING COMPETITION IN THE MARKET FOR LOCAL TELECOMMUNICATIONS SERVICES PSC REGULATION DOCKET NO. 45 CERTIFICATION AND REGULATION OF COMPETITIVE LOCAL EXCHANGE CARRIERS

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DELAWARE PUBLIC SERVICE COMMISSION REVISED INTERIM RULES Governing Competition in the Market for Local Telecommunications Services PSC Regulation Docket No. 45 CERTIFICATION AND REGULATION OF COMPETITIVE LOCAL EXCHANGE CARRIERS

Section 1: Definitions

(1) **The Act** - means the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56.

(2) **COCOT** - customer owned, coin operated (i.e., pay) telephone.

(3) **CPCN** - Certificate of Public Convenience and Necessity.

(4) **Commission** - the Delaware Public Service Commission.

(5) **Competitive Local Exchange Carrier (CLEC)** - a telecommunications services provider, other than the incumbent local exchange carrier, offering and/or providing local telecommunications exchange services, pursuant to a Certificate of Public Convenience and Necessity that is issued pursuant to this Order.

(6) **Incumbent Local Exchange Carrier (ILEC)** - telecommunications services provider that is the incumbent and historical wireline provider of local telecommunications services within a local service territory as of the effective date of these Regulations, and any intrastate regulated affiliate or successor to such entity which is engaged in the provisioning of local telecommunications services; the ILEC in Delaware is Bell Atlantic-Delaware until further action by the Commission.

(7) **Interconnection** - the linking of two networks for

the mutual exchange of traffic. This term does not include the transport and termination of traffic.

(8) Facilities-based Carrier - a local exchange carrier which directly owns, controls, operates, or manages plant and equipment through which it provides local exchange service to consumers within the local exchange portion of the public switched network.

(9) Intrastate Telecommunications Services - telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.

(10) Local Exchange Carrier or Carrier - an entity offering and/or providing local telecommunications exchange services; includes both facilities-based and non-facilities-based providers. Providers of telephone service by either cellular technology or by domestic public land mobile radio service shall not be considered local exchange carriers for purposes of these Rules.

(11) Local Telecommunications Exchange Service - Local telecommunications exchange service includes non-toll, intrastate telecommunications services provided over a local exchange carrier's network, including but not limited to, exchange access services, private line services, basic local services, and public pay phone services. Local telecommunications exchange service, however, does not include:

a. telephone service that is provided by or owned and operated by any political subdivision, public or private institution of higher education, or municipal corporation of this State, or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.

b. telecommunications services provided by a company solely to itself or its affiliates, or between points in the same building or between closely located buildings which are affiliated through substantial common ownership, and where such services do not include access to the public switched network.

c. the rent, sale, or lease, or exchange for other value received, of customer premises equipment except for customer premises equipment owned or provided by a telecommunications carrier certificated prior to the effective date of these regulations and only then to the extent that the regulation of its provision is not Federally preempted.

d. telephone or telecommunications answering services, paging services and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission.

e. community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment services with no more than incidental subscriber interaction required for selection of such entertainment service.

(12) Resale - the sale to an end user of any telecommunications service purchased from another carrier.

(13) Rules - these Interim Rules Governing Competition In The Market For Local Telecommunications Services.

(14) Telecommunications - the transmission, between or among points specified by the user, of information of a user's choosing, without change in the form or content of the information as sent and received.

(15) Telecommunications Service - the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 2: Application of Rules to ILEC

(1) The ILEC will remain subject to the Telecommunications Technology Act (TTIA), 26 Del. C. Sub. Ch. VII-A, during the term of its initial election thereunder.

(2) The ILEC shall have carrier of last resort obligations in its service territory until a final decision is reached regarding universal service issues.

Section 3: Certification of Competitive Local Exchange Carriers

(1) Certification Requirement. All entities wishing to provide local telecommunications exchanges services within the State of Delaware are required to file with the Commission an original and twelve (12) copies of an Application for Certificate of Public Convenience and Necessity. Such application shall contain all the information and exhibits, hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately service the public interest and that the public convenience and necessity requires or will require the operation of such business.

(2) Notice. Notice of the filing of such an application shall be given by the Applicant at the time of filing to the Public Advocate, and to such other entities as may be required by the Commission. Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

(3) License Requirement. Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including having received all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.

(4) Additional Requirements. Each applicant shall be required to present substantial evidence supporting their financial, operational, managerial and technical ability to

render service within the State of Delaware. Such evidence shall include, but is not limited to:

a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

b. Brief narrative description of Applicant's proposed business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.

c. One-year construction, maintenance, engineering and financial plans for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such services. The plan will be filed within six (6) months of the date on which final certification is granted. All such plans will be considered proprietary

d. Relevant operational experience of each principal officer responsible for Delaware operations.

e. Specific description of Applicant's engineering and technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.

f. Description and map of the Applicant's owned, leased, and optioned facilities existing within the State of Delaware. Also, map showing points of presence or location where Applicant is serving customers within the State of Delaware. All such descriptions and maps shall be updated annually.

g. If the applicant does not require deposits, advance payments, prepayments, financial guarantees or the like from customers and charges only for service after it has been provided, then no bond shall be required. Otherwise, applicant shall file a bond with a corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The Bond need not be filed with the application but no certificate will be issued to an Applicant and no Applicant may commence business until Applicant files such Bond with the Commission. The amount of the Bond will be the greater of (1) 150 percent of the projected balance of deposits and advances at the end of three (3) years of operations; or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holders of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three (3) years will be at the discretion of the

Commission which, upon application, may dispense with the Bond requirement for good cause shown.

h. All new applicants seeking CPCNs for authority to become facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.

i. All new applicants seeking CPCNs for authority to become non-facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.

j. Applicants for CPCNs as CLECs who have profitable interstate operations or operations in other states may meet the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirement.

k. Demonstration of cash or cash equivalent can be satisfied by the following:

1. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

2. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

3. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

4. Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

5. Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

6. Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

7. Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

8. Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interests in the applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(5) **Tariffs.** Each application for a Certificate of Public

Convenience and Necessity shall include proposed initial tariffs, rules, regulations, terms and conditions of service specifically adapted for the State of Delaware. Copies of Applicant's tariffs, and terms and conditions of service in other jurisdictions must be provided to the Commission upon request. Applicant's tariffs must include specific policies of customer deposits and advances, for prompt reconciliation of customer billing problems and complaints, and for timely correction of service problems. Applicants must provide and keep current the name, address and telephone number of Applicant's Delaware Resident Agent.

Section 4: Post-Certification Requirements of CLEC

(1) New Options or Offerings. A CLEC may introduce new options or offerings, or change an existing tariff, by filing a supplemental or revised tariff with the Commission. A CLEC intending to offer a new telecommunications service shall provide the Commission with notice of its intention to do so no less than twenty (20) days before the proposed implementation date. The Commission may extend the proposed implementation date for any new service for good cause shown; provided, however, that notwithstanding such extension, the CLEC may offer its new service as described in its original filing unless the Commission shall have, by final Order entered within ninety (90) days of such original filing determined that the proposed new service as described is not in compliance with these Rules. A CLEC filing notice of the offering of a new service pursuant to this Rule shall serve a copy of such notice on all interexchange telecommunications carriers and service providers who have requested it as well as the Office of the Public Advocate.

(2) Abandonment or Discontinuation of Service. A CLEC may abandon or discontinue a service or any part thereof, established within the State of Delaware after having provided the Commission and its customers subscribing to such service with thirty (30) days' written notice. Such notice shall also contain proposed provision for payment of all relevant outstanding liabilities (deposits), if any, to customers within the State of Delaware. If the Commission takes no action within the thirty (30) day notice period, then the abandonment or discontinuation shall be deemed approved. Prior to the expiration of the thirty (30) day notice period, the Commission may act to continue the provision of service for up to an additional sixty (60) days.

(3) Reports to be provided to the Commission. All CLECs certificated to provide local telecommunications exchange service for public use after the effective date of these Rules shall provide such information concerning Delaware operations to the Public Service Commission as the Commission may from time to time request. Information provided pursuant to this paragraph and designated "proprietary" or "confidential" in accordance with paragraph 5(7) of these Rules shall be afforded proprietary treatment

subject to the provisions of the Rules, Commission regulations and Delaware law.

a. The accounting system to be used shall be in accordance with Generally Accepted Accounting Principles or any uniform system of accounts approved in writing by the Chief of Technical Services of the Commission.

b. All reports required by these rules to be submitted to the Commission shall be attested to by an officer or manager of the CLEC, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the CLEC's operation.

c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the CLEC:

1. Annual reports: one hundred twenty (120) days after the end of the reported period.

2. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

d. The annual report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware, (ii) the information used to determine the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

1. Intrastate revenues (net of uncollectibles) by service category;

2. Intrastate access and billing and collection cost by service category;

3. Total number of customers by service category;

4. Total local minutes of use by service category;

5. Total local number of calls by service category;

6. A description of service offered;

7. A description of each complaint received by service category (in the form of a single Complaints Log); and,

8. Verification of deposits, customer advances, the bond requirement and the bond with surety.

(4) Discrimination Prohibited. No CLEC carrier shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware.

(5) Blockage. CLECs cannot interconnect or resell to carriers who are not authorized to provide service in the State of Delaware.

(6) **Pricing Standard.** All CLECs shall provide local end user services at rates that generate sufficient revenue to cover the incremental cost of offering such service.

(7) **Universal Service Fund.** The Commission may, upon completion of an appropriate proceeding, require CLECs and other telecommunications carriers to contribute to a Universal Service Fund.

(8) **Services to be Provided.** CLECs shall offer access to the public switched network and at a minimum, the following telecommunication services to its customers:

- Dial tone line services
- Local usage services
- Access to all available long distance carriers
- TouchTone service
- White pages listing
- Access to 911 enhanced emergency system
- Local directory assistance service
- Access to telecommunications relay service

(9) **Written Authorization Forms Required.** A CLEC must obtain a customer's written authorization in order to change his or her local exchange service provider. Such written authorizations must be separate from inducements such as prizes and contests. The written authorization forms provided by the CLEC must be limited strictly to authorizing a change in local service and it must be clearly identified as an authorization form for such change.

(10) **Negotiation and Mediation Guidelines.** All CLECs must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

(11) **Resale Prohibitions.**

(a) **Cross-Class Selling.** A CLEC that makes a service available only to residential customers or a limited class of residential customers may prohibit the purchaser from offering such services to classes of customers that are not eligible for such services from the providing CLEC.

(b) **Other.** With respect to any restrictions on resale not permitted under this paragraph, a CLEC may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

(12) **Previous Regulation Dockets.** CLECs shall be subject to all previously established rules relating to telecommunications service providers in Delaware, except where such rules are inconsistent with these Rules, and/or the Act. As consistent with the provisions of existing rules and regulations, CLECs may petition the Commission to waive any provision in such rules previously established and regulations, as may be permitted by those rules or regulations.

(13) **Customer Complaint Investigation .** CLECs shall cooperate with Commission investigations of customer complaints.

Section 5: Enforcement

(1) **Commission Oversight:** Nothing in these Rules shall be deemed to limit the authority granted the Commission under the Telecommunications Regulatory Authorization Act of 1992, 26 Del. C. §§ 701-703.

(2) **Violation and Penalties:** Failure of a CLEC to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 Del. C. § 217, 218.

(3) **Proceedings:** Upon application by any person affected, including the Office of the Public Advocate or another carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a CLEC has violated any provision of the Rules. Such proceedings shall be conducted according to the requirements of 2 Del. C. c. 101, the Delaware Administrative Procedures Act.

(4) **Investigations:** For the purpose of determining whether it is necessary or advisable to commence a proceeding described by Rule 5(3) above, the Commission or its Staff may, at any time, investigate whether a CLEC is in compliance with the Rules. Upon request, the CLEC shall provide to the Commission or its Staff sufficient information to demonstrate its compliance with the Rules, including such data as shall demonstrate that the CLEC's services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(5) **Subscriber Complaints as Ground for Proceeding or Investigation:** The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize, any CLEC for reason of subscriber complaints. The Commission may investigate any subscriber complaints received.

(6) **Exemption:** If unreasonable hardship results to a CLEC from the application of any of the Rules contained in Section 3 (Certification of Competitive Local Exchange Carriers) and Section 4 (Post Certification Requirements of CLECs) hereof, or if unreasonable difficulty is involved in compliance, the CLEC may make application to the Commission for temporary or permanent exemption from such Rule or Rules. The CLEC shall submit with such application a full and complete statement of its reasons for such application.

(7) **Proprietary Information:** Under Delaware's Freedom of Information Act, 29 Del. C. ch. 100 ("FOIA"), all information filed with the Commission is considered of public record unless it contains trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del. C. § 10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect.

The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

(8) Re-evaluation of Rules after 18 Months: The Commission will re-evaluate these Rules and the need for any revisions thereto approximately eighteen (18) months from the date of approval by the Commission of said Rules.

A T T A C H M E N T 3

PUBLIC SERVICE COMMISSION OF DELAWARE RULES FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES

PART A CERTIFICATION AND REGULATION OF CARRIERS

Rule 1. Definitions.

(a) Rules shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.

(b) Carrier shall mean any person or entity offering to the public Telecommunications service that originates or terminates within the State of Delaware. The term "Carrier" does not include:

(i) any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;

(ii) a company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;

(iii) providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 *Del. C.* § 202(c); and

(iv) Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.

(c) CPCN shall mean a Certificate of Public Convenience and Necessity issued by the Commission.

(d) Commission shall mean the Public Service

Commission of Delaware.

(e) Competitive Local Exchange Carrier ("CLEC") shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services within the State of Delaware.

(f) Incumbent Local Exchange Carrier ("ILEC") shall mean in Delaware Bell Atlantic-Delaware, Inc., and any successor thereto.

(g) Facilities-based Carrier shall mean a Local Exchange Carrier that directly owns, controls, operates, or manages plant and equipment through which it provides local exchange services to consumers within the local exchange portion of the public switched network.

(h) Local Exchange Carrier ("LEC") shall mean a Carrier offering and/or providing local telecommunications exchange services (i.e., CLECs and ILECs); including both facilities-based and non-facilities-based Carriers

(i) Local Telecommunications Exchange Service shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network, including, but not limited to, exchange access services and basic local services.

(j) Resale shall mean the sale to an end user of any telecommunications service purchased from another Carrier

(k) Telecommunications shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.

(l) Telecommunications Service shall mean the offering of telecommunications for a fee directly to the public within the State of Delaware (originating or terminating within the State, without regard to how the Carrier decides to route the traffic), or to such classes of users as to be effectively available to the public, regardless of the facilities used.

"Telecommunications Service" does not include:

(i) the rent, sale, lease, or exchange for other value received, of customer premises equipment, except for specialized terminal equipment as defined in 48 U.S.C. § 610(g);

(ii) telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;

(iii) The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and

(iv) Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

Rule 2. Applicability.

These Rules shall apply to all Carriers, as defined by these Rules, and shall be construed consistently with Rule 3 of these Rules.

Rule 3. Application of and Conflict With Other Rules, Regulations, Tariffs and/or Price Lists.

(a) The ILEC.

(i) The ILEC will remain subject to the Telecommunications Technology [Investment] Act (TTIA), 26 *Del. C.* sub. Ch. VII-A, and any implementing regulations promulgated by the Commission during the term of its election thereunder. During such term, the ILEC shall not be subject to the requirements of these Part A. Rules; and

(ii) The ILEC has Carrier of last resort obligations in its service territory.

(b) Telephone Service Quality Regulations (Docket No. 20).

All Carriers shall provide telephone service in accordance with the Telephone Service Quality Regulations the Commission adopted in PSC Regulation Docket No. 20, by Order No. 3232 (January 15, 1991) as such may from time to time be amended, except to the extent these Rules impose obligations or grant privileges inconsistent therewith.

(c) Negotiation and Mediation Guidelines.

All Carriers must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

(d) Rules of Practice and Procedure.

The practice and procedure governing any proceedings required or authorized by these Rules shall be as set forth by the Commission's Rules of Practice and Procedure adopted in PSC Docket No. 99-9, by Order No. 5057 (April 6, 1999) as the same may be hereafter from time to time amended.

(e) Other Rules and Statutes.

These Rules shall prevail over any inconsistent requirements imposed by prior Order or regulation of the Commission, except for Rule 3(a) preceding and where expressly authorized by a Commission Order granting a waiver. All Carriers remain subject to any and all applicable provisions of state and federal law.

(f) Tariffs or Price Lists.

To the extent that a tariff or price list of any Carrier is inconsistent with these Rules, then, and in that event, these Rules shall control, subject to Rule 3(a) preceding, unless where expressly authorized by a Commission Order granting a waiver

Rule 4. Certification.

(a) Certification Requirement.

No person or entity shall offer public intrastate or local exchange telecommunications service within the State of Delaware without first obtaining from the Commission a Certificate of Public Convenience and Necessity authorizing such service. A Carrier offering telecommunications service within the State of Delaware without a CPCN duly issued by this Commission is acting unlawfully and shall immediately cease offering such service until a CPCN is granted.

(b) Application.

An applicant for a CPCN shall file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity, together with the statutory filing fee set forth in 26 *Del. C.* § 114, as the same may from time to time be amended. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately serve the public and that the public convenience and necessity requires or will require the operation of such business.

(c) Notice.

The applicant shall serve a notice of the filing of such an application upon the Public Advocate, and to such other entities as may be required by the Commission. The applicant shall provide public notice of the filing of the application in two (2) newspapers having general circulation throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

(d) Business License and Registered Agent.

An applicant shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has received authorization to do business issued by the Secretary of State. An applicant shall provide the name, address, and telephone number of its Delaware Resident Agent. Following certification, all Carriers shall promptly notify the Commission in writing of changes of Resident Agent or the name, address, or telephone number thereof.

(e) Identification and Billing of Intrastate and Interstate Traffic.

An applicant shall be required to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate LEC for access at the LEC's prevailing access charge rates. If adequate means of categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the LEC for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher access charges.

(f) Bonds.

(i) Applicants with assets under \$250,000.

An applicant with total assets less than \$250,000 must post a \$10,000 performance bond with Delaware surety and renew such bond annually until the Carrier's assets exceed \$250,000.

(ii) Carriers requiring deposits, or any form of payment in advance for service.

No Carrier shall require its customers in Delaware to pay a deposit or pay or otherwise provide any security or advance as a condition of service unless that Carrier first has filed with the Commission a bond, issued by a corporate surety licensed to do business in Delaware, guaranteeing the repayment of all customer deposits and advances upon the termination of service. The bond need not be filed with the application, but no CPCN will be issued until such bond is filed with the Commission. The amount of the bond shall be the greater of: (A) 150% of the projected balance of deposits and advances at the end of three years of operation; or (B) \$50,000. If at any time the actual amount of deposits and advances held by a Carrier exceeds the bond, then the Carrier promptly shall file with the Commission a bond with surety to comply with the requirement of the preceding sentence. A Carrier may petition for waiver of the bond requirement three years from the date the certificate was issued and such waiver will be granted upon a demonstration of an adequate operating history and financial resources to insure the repayment to customers of any advance payments or deposits held.

(g) Minimum Financial Requirements for LECs.

(i) Any applicant for certification as a facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available;

(ii) Any applicant for certification to do business as a non-facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available;

(iii) Any applicant that has profitable interstate operations or operations in other states may meet the minimum financial requirements of subparagraphs (i) and (ii) above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and

(iv) An applicant may demonstrate cash or cash equivalent by the following:

(A) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

(B) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

(C) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(D) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least (12) months beyond certification of the applicant by the Commission;

(E) Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(F) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding a controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(G) Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(H) Guarantee, issued by a qualified subsidiary, affiliate of the applicant, or a qualified corporation holding controlling interests in the applicant irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(h) Initial Tariffs or Price Lists.

An applicant shall file proposed initial rates, prices, rules, regulations, terms and conditions of service specifically adopted for the State of Delaware. Upon an investigation into unjust and unreasonable pricing practices, the Commission Staff may require the applicant to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service. Copies of the applicant's rates and terms and condition of service in other jurisdictions must be provided to the Commission upon request. Any applicant's tariff or price lists must include at a minimum specific policies regarding:

(i) customer deposits and advances;

(ii) prompt reconciliation of customer billing problems and complaints; and

(iii) timely correction of service problems.

(i) Demonstration of Fitness.

An applicant shall be required to demonstrate to the Commission its financial, operational, and technical ability to render service within the State of Delaware. Such demonstration shall include, but is not limited to, the following:

(i) The applicant's certified financial statements current within twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;

(ii) A brief narrative description of the applicant's proposed operations in Delaware, any present operations in all other states, and states for which service applications are pending;

(iii) A description of the relevant operations

experience of applicant's personnel principally responsible for the proposed Delaware operations

(iv) A specific description of the applicant's engineering and technical expertise showing its qualifications to provide the intended service, including the names, addresses, and qualifications of the officers, directors, and technical or engineering personnel or contractors who will be operating and/or maintaining the equipment to be used to provide such service; and

(v) A description, including location, of the applicant's facilities that the applicant will use to provide the proposed service in the next three years. Upon written request of the Commission Staff, the applicant shall provide a one year construction, maintenance, engineering, and financial plan for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such service.

Rule 5. New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions.

(a) Notice Required for New Service Options and Offerings

No Carrier shall offer new telecommunication service options or offerings except ten (10) days after filing with the Commission the proposed tariff or price list.

(b) Notice Required to Revise Existing Tariff or Price List.

No Carrier shall revise an existing tariff or price list except three (3) days after filing with the Commission the proposed tariff or price list.

(c) Service of Notice.

A Carrier filing a new service or changes to an existing service pursuant to this Rule shall serve the filing on:

- (i) the Public Advocate; and
- (ii) all interested persons that submit a written request to the Commission to receive such notice.

A Carrier shall file with the Commission a certificate of service as part of its notice requirement. To the extent that any such documents contain information claimed to be proprietary and interested persons have submitted a written request for notice, but have not executed an appropriate proprietary agreement, the Carrier shall provide an expurgated version of the notice to such parties.

(d) Investigation of Filings.

A filing made pursuant to this rule shall not preclude the Commission or its Staff from an informal or formal investigation into the filing in order to protect fair competition, including requiring the Carrier to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service.

(e) Special Contracts

A Carrier shall file under this rule all contracts with a customer to the extent the contract changes the terms or

conditions generally offered to the public in the carrier's tariff or price list on file with the Commission.

Rule 6. Discrimination Prohibited.

No Carrier shall unreasonably discriminate among persons requesting a service within the State of Delaware. Any finding of unreasonable discrimination shall be grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission, as well as the imposition of monetary and other penalties pursuant to 2Del. C. §§ 217 and 218.

Rule 7. Abandonment or Discontinuation of Service.

A Carrier may abandon or discontinue service, in whole or in part, in accordance with the terms of 26 Del. C. § 203A(c). The Carrier shall provide notice of its application to discontinue or abandon service to its customers subscribing to such service and to the Division of Public Advocate. Such notice shall describe the options available to the customers. The Carrier's application to abandon or discontinue a service shall contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware.

Rule 8. Services to be Provided By CLECs Providing Voice Telephone Service.

Any CLEC providing voice telephone service shall offer, at a minimum, the following telecommunication services to its customers:

- (a) access to the public switched network;
- (b) dial tone line services;
- (c) local usage services;
- (d) access to all available long distance Carriers;
- (e) TouchTone services;
- (f) White page listing;
- (g) Access to 911 enhanced emergency system;
- (h) Local directory assistance service;
- (i) Access to telecommunications relay service.

Rule 9. Resale Prohibitions.

(a) Cross-Class Selling.

A Carrier that by tariff or price list makes a service available only to residential customers or a limited class of residential customers may prohibit the purchaser from offering such services to classes of customers that are not eligible for such services from the providing Carrier.

(b) Other.

With respect to any restrictions on resale other than cross-class selling as described in paragraph (a) above, a Carrier may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

Rule 10. Reports to the Commission.

(a) Annual and Periodic Reports.

All Carriers shall file with the Commission an Annual Report as described below and such other reports or information as the Commission may from time to time require to fulfill its statutory obligations. The Annual Report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include:

(i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware;

(ii) the information used to determine Delaware income tax liability;

(iii) financial and operating information for the smallest management unit that includes Delaware;

(iv) intrastate revenues (net of uncollectible) by service category;

(v) intrastate access and billing and collection cost by service category;

(vi) total number of customers by service category;

(vii) total intrastate minutes of use by service category;

(viii) total intrastate number of calls by service category;

(ix) a description of service offered;

(x) a description of each complaint received by service category (in the form of a single Complaints Log); and

(xi) verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.

(b) Accounting System.

All Carriers shall use an accounting system in accordance with Generally Accepted Accounting Principles or such other uniform system of accounts previously approved in writing by the Chief of Technical Services of the Commission.

(c) Attestation.

All Carriers shall file all reports required by these Rules with a sworn statement by the person under whose direction the report was prepared, that the information provided in the report is true and correct to the best of the person's knowledge and belief.

(d) Time for Filing.

All periodic reports to be filed with this Commission must be received on or before the following due dates, unless otherwise specified herein, or unless good cause is demonstrated by the Carrier:

i. Annual Report: one hundred twenty (120) days after the end of the reported period; and

ii. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

Rule 11. Enforcement.

(a) Commission Oversight.

The Commission shall have the authority and the discretion to take such action, upon complaint, motion, or formal or informal investigation, to remedy any alleged violations of these Rules. The Commission shall have available to it all remedies and enforcement powers bestowed by statute and consistent with due process.

(b) Violation and Penalties.

Failure of a Carrier to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 *Del. C.* §§ 217 and 218.

(c) Proceedings.

Upon application by any person affected, including the Division of the Public Advocate or another Carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a Carrier has violated any provision of these Rules. Such proceedings shall be conducted according to the Commission's Rules of Practice and Procedure.

(d) Investigations

For the purpose of determining whether it is necessary or advisable to commence a proceeding, the Commission or its Staff may, at any time, investigate whether a Carrier is in compliance with these Rules. Upon request, the Carrier shall provide to the Commission or its Staff sufficient information to demonstrate its compliance or noncompliance with the Rules, including such data as shall demonstrate that the Carriers' services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(e) Customer Complaints as Ground for Proceeding or Investigation.

The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize any Carrier for reason of customer complaints. The Commission may investigate any customer complaints received.

Rule 12. Waiver of Rules Upon Petition.

A Carrier may petition the Commission for waiver of a Rule or Rules on a temporary or permanent basis by demonstrating to the satisfaction of the Commission that a waiver is in the public interest or for other good cause, including unreasonable hardship or burden. The Carrier shall comply with all Rules until the petition for waiver has been granted.

PART B**CUSTOMER ELECTION OF PREFERRED CARRIER****Rule 13. Additional Definitions.**

For purposes of this PART B, in addition to the

Definitions set forth by PART A, the following definitions shall apply:

(a) Submitting Carrier shall mean a Carrier that: (i) requests on the behalf of a customer that the customer's telecommunications Carrier be changed; and (ii) seeks to provide retail services to an end user customer. A Carrier may be treated as a Submitting Carrier, however, if it is responsible for any unreasonable delays in the submission of Carrier change requests or for the submission of unauthorized Carrier change requests, including fraudulent authorizations.

(b) Executing Carrier shall mean a Carrier that effects a request that a customer's telecommunications Carrier be changed. A Carrier may be treated as an executing Carrier, however, if it is responsible for any unreasonable delays in the execution of unauthorized Carrier changes, including fraudulent authorizations.

(c) Preferred Carrier shall mean the Carrier providing service to the customer at the time of the adoption of these Rules, or such Carrier as the customer thereafter designates as the customer's Preferred Carrier.

(d) Preferred Carrier Change Order shall mean generally any order changing a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.

Rule 14. Applicability.

Any Carrier offering intrastate and/or local exchange service for public use within the State of Delaware, including the ILEC, Bell Atlantic-Delaware, Inc., shall be subject to the provisions of these Part B Rules.

Rule 15. Verification of Orders for Telecommunications Service.

No Carrier shall submit a Preferred Carrier Change Order unless and until the Order has been first confirmed in accordance with one of the following procedures:

(a) The Carrier has obtained the customer's written authorization in a form that meets the requirements of Rule 16; or

(b) The Carrier has obtained the customer's electronic authorization to submit the Preferred Carrier Change Order. Such authorization must be placed from the telephone number(s) on which the Preferred Carrier is to be changed and must confirm the information required in Rule 16(e). Carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party

has obtained the customer's oral authorization to submit the Preferred Carrier Change Order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party must: (1) not be owned, managed, controlled, or directed by the Carrier or the Carrier's marketing agent; (2) must not have any financial incentive to confirm Preferred Carrier Change Orders for the Carrier or the Carrier's marketing agent; and (3) must operate in a location physically separate from the Carrier or the Carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier change.

Rule 16. Letter of Agency Form and Content.

(a) Carrier may use a letter of agency to obtain written authorization and/or verification of a customer's request to change his or her Preferred Carrier selection. A letter of agency that does not conform with this Rule is invalid.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this Rule having the sole purpose of authorizing a Carrier to initiate a Preferred Carrier change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the Preferred Carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c), a letter of agency authorizing a preferred Carrier selection affecting the customer's intrastate service provider only, may be combined with checks that contain only the required letter of agency as prescribed above together with the necessary information to make the check a negotiable instrument. Such a letter of agency check shall not contain any promotional language or material. Such a letter of agency check shall contain in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a Preferred Carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The customer's billing name and address and each telephone number to be covered by the Preferred Carrier change order;

(ii) The decision to change the Preferred Carrier from the current Carrier to the soliciting Carrier;

(iii) That the customer designates the Submitting Carrier to act as the customer's agent for the Preferred Carrier change;

(iv) That the customer understands that only one

Carrier may be designated as the customer's local exchange or intrastate Carrier for any one telephone number; and

(v) That the customer understands that any Preferred Carrier selection the customer chooses may involve a charge to the customer for changing the customer's Preferred Carrier.

(f) Any Carrier designated in a letter of agency as a Preferred Carrier must be the Carrier directly setting the rates for the customer.

(g) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current telecommunications Carrier.

(h) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency.

Rule 17. Submission and Execution of Changes in Customer Carrier Selections.

(a) A Submitting Carrier shall maintain and preserve records of verification of customer authorization for a minimum period of two years after obtaining such verification.

(b) An Executing Carrier shall not verify the submission of a change in customer's selection of a provider of telecommunications service received from a Submitting Carrier. An Executing Carrier shall promptly execute, without an unreasonable delay, any changes that have been verified and submitted by a Submitting Carrier.

(c) Where a Carrier provides more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll), that Carrier must obtain separate authorization from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorization obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in these Rules.

Rule 18. Preferred Carrier Freezes.

(a) A Preferred Carrier freeze prevents a change in a customer's Preferred Carrier selection unless the customer has given the Carrier from which the freeze was requested his or her express consent. All Carriers who offer Preferred Carrier freezes must comply with the provisions of this Rule.

(b) All Local Exchange Carriers that offer Preferred Carrier freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's Carrier selections.

(c) Preferred Carrier freeze procedures, including any

solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a Preferred Carrier freeze. The Carrier offering the freeze must obtain separate authorization for each service for which a Preferred Carrier freeze is requested.

(d) All Carrier-provided solicitation and other materials regarding Preferred Carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a Preferred Carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a Preferred Carrier freeze; and explanation that these steps are in addition to the Commission's verification rules for changing a customer's Preferred Carrier selections; and an explanation that the customer will be unable to make a change in Carrier selection unless he or she lifts the freeze; and

(iii) An explanation of any charges associated with the Preferred Carrier freeze.

(e) No Carrier shall implement a Preferred Carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The Local Exchange Carrier has obtained the customer's written and signed authorization in a form that meets the requirements of these Rules; or

(ii) The Local Exchange Carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the Preferred Carrier freeze is to imposed, to impose a Preferred Carrier freeze. The electronic authorization should confirm appropriate verification data (e.g. the customer's date of birth or social security number) and the information required in these Rules. Carriers electing to confirm Preferred Carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier freeze request, including automatically recording the originating automatic number identification; or

(iii) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the Preferred Carrier freeze and confirmed that appropriate verification data (e.g. the customer's date of birth or social security number) and the information required in these Rules. The independent third party must: (A) not be owned, managed, or directly controlled by the Carrier or the Carrier's marketing agent; (B) must not have any financial incentive to confirm Preferred Carrier freeze requests for the Carrier or the Carrier's marketing agent; and (C) must operate in a location physically separate from the Carrier or

the Carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier freeze.

(f) A Carrier may accept a customer's written and signed authorization to impose a freeze on his or her Preferred Carrier selection. A written authorization that does not conform to this Rule is invalid and may not be used to impose a Preferred Carrier freeze.

(i) The written authorization shall comply with these Rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The customer's billing name and address and the telephone number(s) to be covered by the Preferred Carrier freeze;

(B) The decision to place a Preferred Carrier freeze on the telephone number(s) and particular service(s). The authorization must contain a separate statement for each service to be frozen;

(C) That the customer understands that she or he will be unable to make a change in Carrier selection unless she or he lifts the Preferred Carrier freeze; and

(D) That the customer understands that any Preferred Carrier freeze may involve a charge to the customer.

(g) All Carriers who offer Preferred Carrier freezes must, at a minimum, offer customers the following procedures for lifting a Preferred Carrier freeze:

(i) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's written and signed authorization stating her or his intent to lift a Preferred Carrier freeze; and

(ii) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's oral authorization stating her or his intent to lift a Preferred Carrier freeze and must offer a mechanism that allows a submitting Carrier to conduct a three-way conference with the Carrier administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a Preferred Carrier freeze, the Carrier administering the freeze shall confirm appropriate verification data (e.g., the customer's date of birth or social security number) and the customer's intent to lift the particular freeze.

Rule 19. Customer Protection.

(a) Procedures To Be Followed By The Customer

A customer who believes his or her Carrier or Carriers have been changed, without the customer's authorization, and/or that the customer has been billed for charges not authorized by the customer, should first attempt

to resolve the matter with the Carrier or Carriers responsible for the unauthorized changes and/or charges. If the customer is not satisfied with the resolution offered by the Carrier, the customer may file a complaint with the Commission.

(b) Procedures To Be Followed By Carriers.

A Carrier who is informed by a customer that the customer believes the Carrier has caused or allowed a change in the customer's Carrier without the customer's authorization, or that the Carrier has caused or allowed the customer to be billed for charges not authorized by the customer shall attempt to resolve the complaint promptly and in good faith. If the customer and Carrier are not able to resolve the complaint, then the Carrier shall inform the customer orally or in writing of the right to file a complaint with the Commission and shall provide the customer with the Commission's address and telephone number.

(c) Carriers to Maintain Record of Complaints.

Each Carrier shall maintain a record of the complaints received by it alleging that the Carrier has caused or allowed a customer's Carrier to be changed without the customer's authorization or has caused or allowed the customer to be billed for charges not authorized by the customer. The Carrier shall maintain the record of each complaint for a period of two years following initial notification of the complaint. Upon request by the Commission or its staff, a Carrier shall furnish a copy of its complaint records and such other information as the Commission Staff may require. A Carrier's complaint records shall include at least the following information:

(i) name, address, and telephone number of complainant and the date and manner received by the Carrier; and

(ii) a chronological summary of the dispute and its current status, including any resolution and date of resolution.

(d) Refund and Penalties.

In the event the Commission determines that a Carrier has caused a customer's Carrier for a service to be changed without the customer's authorization obtained in exact compliance with these Rules, or has caused the customer to be billed for charges imposed without exact compliance with these Rules, then the Commission may require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law.

EXHIBIT "B"**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE SALE, RESALE, AND OTHER PROVISIONS OF INTRASTATE TELECOMMUNICATIONS SERVICES (OPENED MAY 1, 1984; REOPENED NOVEMBER 17, 1998		PSC REGULATION DOCKET NO. 10
IN THE MATTER OF THE DEVELOPMENT OF REGULATIONS FOR THE FACILITATION OF COMPETITIVE ENTRY INTO THE TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE MARKET (OPENED NOVEMBER 21, 1995; REOPENED NOVEMBER 17, 1998		PSC REGULATION DOCKET NO. 45

**NOTICE OF PROPOSED REPEAL AND ADOPTION
OF RULES FOR THE PROVISION OF
TELECOMMUNICATIONS SERVICE**

The Delaware Public Service Commission (the "PSC" or "Commission") proposes to repeal its existing "Rules for the Provision of Competitive Intrastate Telecommunications Services" first adopted *In the Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services*, PSC Regulation Docket No. 10 ("the Docket 10 Rules") and its existing "Interim Rules Governing Competition in the Market for Local Telecommunications Services" first adopted *In the Matter of The Development of Regulations For The Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45 (the "Docket 45 Rules"), and to adopt in their place a set of *Rules for the Provision of Telecommunications Service*. The proposed new Rules are intended to reflect the changes in the regulatory environment since the adoption of the Docket 10 and 45 Rules; to consolidate the Docket 10 Rules and Docket 45 Rules into a single set of rules; and to harmonize the provisions of these Rules with other regulatory provisions, where practicable. The proposed new Rules will, overall, lessen the regulatory burdens and costs, both to regulated carriers and the PSC.

Significant proposed changes to the Rules include provisions: allowing carriers to file price lists in place of tariffs; eliminating the requirement that tariffs (or price lists) be accompanied by cost studies; allowing changes to existing rates to be implemented upon three days notice, rather than on fourteen or five days notice; adding a new rule to govern customer election of preferred carriers consistent with the Federal Communications Commission's preferred

carrier election rules; and adding a new rule governing enforcement of the *Rules for the Provision of Telecommunications Services*.

The PSC derives its legal authority to make and amend regulations governing the conduct of public utilities from 26 Del. C. §§ 201 and 209. In addition, under 26 Del. C. § 703, the PSC is authorized to modify its regulation of telecommunications services where such modifications will, among other things, promote efficiency in public and private resource allocations and encourage economic development. The process under which the PSC acts to make and amend regulations is set forth by 29 Del. C. §§ 10111 through 10119.

The text of the existing and proposed Rules, along with summaries of the proposed changes, may be inspected at the Commission's office, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 during the Commission's normal business hours, Monday to Friday, 8:00 AM to 4:30 PM. Copies of the present and proposed Rules are available at a fee of \$0.25 per page. The present and proposed rules may also be inspected and copied at the Commission's website - <http://www.state.de.us/govern/agencies/pubserv/delpsc.htm>.

The PSC solicits written comments, compilations of data, briefs, or other written materials addressing repeal of the Docket 10 Rules and Docket 45 Rules and adoption of the proposed *Rules for the Provision of Telecommunications Service*. Twelve (12) copies of such written materials shall be filed with the Commission at its office at the above address on or before May 30, 2000. In addition, any comments should include proposed text of any further or alternate amendments to the Rules supported by the party submitting comments. The Public Service Commission will conduct a public hearing upon the proposed repeal of the Docket 10 and 45 Rules and adoption of the proposed *Rules for the Provision of Telecommunications Services* and all comments and materials received on June 6, 2000, commencing at 1:00 PM at the Commission's Dover office. Persons who wish to participate in these proceedings may contact the Commission in writing by May 30, 2000. Individuals with disabilities who wish to participate in these proceedings may contact the Commission to discuss auxiliary aids or services needed to facilitate such participation. Contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll free number is 800-282-8574.

Persons may also obtain more information by contacting the Commission at (302) 739-4247. That number can also be used for Text Telephone Calls. Inquiries can also be sent by Internet e-mail to cmcdowell@state.de.us.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

DIVISION OF PROFESSIONAL REGULATION

BOARD OF MASSAGE AND BODYWORK

Statutory Authority: 24 Delaware Code, Section
105(1) (24 Del.C. §5306(1))

Order Adopting Rules and Regulations

AND NOW, this 6th day of April, 2000, in accordance with 29 Del.C. §10118 and for the reasons stated hereinafter, the Board of Massage and Bodywork of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Pursuant to its authority under 24 Del.C. §§5306(1), the Board proposes to adopt changes and additions to its existing Rules and Regulations, relating to the definition of the practice of "massage and bodywork" and continuing education requirements for licensees. Notice of the public hearing on the Board's proposed rule amendments was published in the Delaware *Register of Regulations* on February 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 Del.C. §10115. The public hearing was held as noticed on March 2, 2000. The Board deliberated and voted on the proposed rule

amendments following the public hearing at the February 1, 2000 meeting, voting unanimously to adopt the rule amendments. This is the Board's Decision and Order ADOPTING the rule amendments as proposed.

Evidence and Information Submitted at Public Hearing

The Board received no written comments in response to the notice of intention to adopt the proposed rule amendments. No members of the public attended the March 2, 2000 public hearing.

Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Board's intention to amend its rules and regulations and was offered an adequate opportunity to provide the Board with comments on the proposed regulations. The Board concludes that its consideration of the proposed rules and regulations is within the Board's general authority to promulgate regulations under 24 Del.C. §5306(1). Specific statutory authority for the Board's adoption of continuing education standards (Proposed Rule 6.0) is found at 24 Del.C. §5306(7).

The proposed addition of Rule 1.3¹ categorizes certain modalities and schools of practice which do or do not constitute the "practice of massage and bodywork" as that term is defined in 24 Del.C. §5302(6).² The Board concludes that the adoption of Rule 1.3 will provide

guidance to licensees, non-licensees and the public as to which modalities constitute the practice of massage and bodywork and may, therefore, only be performed by a practitioner licensed by the Board. The Rule will further provide guidance and consistency in Board evaluation of continuing education programs and credits.

The Board specifically discussed the inclusion of Reflexology as a modality which does constitute the practice of massage and bodywork. Reflexology is a hands-on treatment designed to promote health and well-being and so falls within the statutory definition of the "practice of massage and bodywork" set forth at 24 Del. C. §5302(6).

Proposed Rule 6.0 completely revises the current Rule 6 pertaining to Continuing Education. Proposed Rule 6.0 increases the number of required continuing education hours for massage *therapists* from 12 to 24 per biennial licensing period; clarifies content requirements and Board approval procedures; allows credit for certain self-directed activities, such as teaching and research; allows additional credit for serving as a continuing education instructor; establishes reporting requirements, and establishes the procedure by which a licensee can request an extension of time in which to complete his or her hours in cases of hardship.

The increase in continuing education hours for massage therapists is appropriate, as licensed therapists (as distinct from massage technicians) are held to a higher educational and practice standard, as they are allowed to employ massage and bodywork techniques to treat medical conditions on the prescription of a physician or chiropractor. The Board concludes that the revision of Rule 6.0 helps the Board implement 24 Del. C. §5306(7) in a way consistent with the interests of the public, the regulated practitioners, and the Board's need to process license renewals in an orderly and efficient manner.

Finally, the Board has made a non-substantive amendment to Rule 4.0 to correct a typographical error and an error in citation to the statute.

In summary, the Board concludes that the proposed revisions to its Rules and Regulations are necessary for the enforcement of 24 Del. C. Chapter 53, and for the full and effective performance of the Board's duties under that Chapter. The Board also finds that adopting the regulations as proposed is in the best interest of the citizens of the State of Delaware, particularly those persons who are the direct recipients of services regulated by the Board. The Board,

1. The Board's Rules and Regulations, formerly identified by number and letter (e.g. Rule 1(a)) have been re-numbered according to the uniform system of the *Delaware Register of Regulations* (e.g. Rule 1.1).
2. The title of Rule 1.0 has also been changed from "Definitions" to "Definitions and General Definitions" to reflect the new content of the Rule.

therefore, adopts the proposed revisions to its Rules and Regulations as set forth in Exhibit "A" attached hereto.

Order

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Massage and Bodywork, IT IS HEREBY ORDERED THAT:

1. The revisions to Rules and Regulations 1.0, 4.0, and 6.0 are *approved and adopted* in the exact text attached hereto as Exhibit "A".
2. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 Del. C. §10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

BOARD OF MASSAGE AND BODYWORK

(as authenticated by a quorum of the Board):

Allan Angel, President, Public Member
Phyllis E. Mikell, Vice-President, Professional Member
Daniel P. Stokes, Secretary, Professional Member
Vivian L. Cebrick, Public Member
Elizabeth Olsen, Esq., Public Member
Elizabeth T. Richmond, Professional Member
Patricia A. Beetschen, Professional Member

Board of Massage and Bodywork Rules and Regulations

1.0 Definitions and General Definitions.

1.1 The term "500 hours of supervised in-class study" as referenced in 24 Del.C. Section 5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in Section 5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "100-hour course of supervised in-class study of massage" as referenced in 24 Del.C. Section 5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 100 hour course which includes hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and

bodywork.

1.3 The “practice of massage and bodywork” includes, but is not limited to, the following modalities:

Acupressure
Chair Massage
Craniosacral Therapy
Deep Tissue Massage Therapy
Healing Touch
Joint Mobilization
Lymph Drainage Therapy
Manual Lymphatic Drainage
Massage Therapy
Myofascial Release Therapy
Neuromuscular Therapy
Orthobionomy
Process Acupressure
Reflexology
Rolfing
Shiatsu
Swedish Massage Therapy
Trager
Visceral Manipulation

The practice of the following modalities does not constitute the “practice of massage and bodywork”:

Alexander Technique
Aroma therapy
Feldenkrais
Hellerwork
Polarity Therapy
Reiki
Shamanic Technique
Therapeutic Touch

2.0 Filing of Application for Licensure as Massage/Bodywork Therapist.

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of a current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** Section 5308(3); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** Section 5311.

2.2 In addition to the application and materials described in paragraph 2.1 of this Rule, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 **Del.C.** Section 5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the

applicant's score on the written examination described in Rule 3 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in paragraphs 2.1 and 2.2 of this Rule are submitted to the Board's office.

3.0 Examination.

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

4.0 Application for Certification as Massage Technician.

4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of current certificate ~~form~~ from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** Section 5308(3) ~~5309(a)(2)~~; and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** Section 5311.

Summary: This amendment corrects a typographical error and an error in citation in the current rule 4.1. This is a non-substantive amendment. 29 Del. C. §10113(b)(4).

4.2 In addition to the application and materials described in paragraph 4.1 of this Rule, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** Section 5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in paragraphs 4.1 and 4.2 of this Rule are submitted to the Board's office.

5.0 Expired License or Certificate.

An expired license as a massage/bodywork therapist or expired certificate as a massage technician may be reinstated within ninety (90) days after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation.

6.0 Continuing Education.

~~6.1 As a precedent setting condition to the renewal of~~

~~the two year license or certification, a massage/bodywork therapist or massage technician must complete twelve hours of study in the field of massage/bodywork practice during the two year period immediately preceding renewal; provided however, that if the massage/bodywork therapist or massage technician has been licensed or certified one year or less on the date of renewal, the requirement for continuing education shall be pro-rated as follows:~~

~~—Licensed or certified less than six months at date of renewal; zero (0) hours;~~

~~—Licensed or certified six – twelve months at date of renewal; six (6) credit hours.~~

~~6.2 Continuing education may include, but is not limited to conferences, seminars and classes. Renewal of licensure or certification is contingent upon approval of continuing education courses by the Board.~~

~~(Continuing Education Adopted March 26, 1996).~~

6.1 Hours required. For license or certification periods beginning September 1, 2000 and thereafter, each massage/bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

6.2 Proration. Candidates for renewal who were first licensed or certified twelve (12) months or less before the date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

6.3 Content.

6.3.1 Except as provided in Rule 6.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge.

6.3.2 No more than 25% of the continuing education hours required in any licensing period may be earned in any combination of the following areas and methods:

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer

6.4 Board approval.

6.4.1 “Acceptable continuing education” shall include any continuing education programs meeting the requirements of Rule 6.3 and offered or approved by the following organizations:

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

6.4.2 Other continuing education programs or providers may apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

6.4.3 Self-directed activity:The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.4.4 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6.3.2.

6.5 Reporting.

6.5.1 For license or certification periods beginning September 1, 2000 and thereafter, each candidate

for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

6.5.2 If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.5.3 If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.6 Hardship. A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.

7.0 Scope of Practice.

Licensed massage/bodywork therapist and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 Del.C. 10027)

Order

Pursuant to 29 Del. C. §10118 and 3 Del. C. §10027, the Delaware Harness Racing Commission ("Commission") hereby issues this Order promulgating proposed amendments to the Commission's Rules. Following notice and a public hearing held on February 7, 2000 on the proposed Rules, the Commission makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Commission posted public notice of the proposed rule revisions in the January 1, 2000 Register of Regulations and in the News-Journal and the Delaware State News. The proposal contained twenty-four proposed changes to the Commission's existing rules. The Commission scheduled a public hearing for January 26, 2000. Due to inclement weather, the public hearing was rescheduled for February 7th. Prior to the new hearing date, the Commission posted notice of the rescheduled hearing date in the News-Journal and the Delaware State News.

2. At the public hearing, the Commission received as evidence the report prepared by the Ad Hoc Committee on proposed changes to the existing medication rules. The Committee was formed pursuant to 3 Del. C. §10029(g) to consider the implementation of additional penalties including forfeiture of horses to be imposed on licensees whose horses test positive for illegal drugs. The Ad Hoc Committee, chaired by Chairman Flynn, held fifteen meetings and one public hearing. The Ad Hoc Committee considered over one hundred submissions from various expert sources in the harness racing industry. In January, 1999, the Ad Hoc Committee submitted an interim report to the General Assembly. The Ad Hoc Committee recommended proposed rule changes #1-20 published in the January, 2000 Register of Regulations. The Ad Hoc Committee's final report contained its findings and reasoning for the proposed rule changes.

3. At the public hearing, the Commission received public comments from Salvatore DiMario, the executive director of DSOA. Mr. DiMario objected to proposed amendment #2 to Rules 8.3.2.4 and 8.3.2.5. Mr. DiMario stated the proposed rules could expose a licensee to multiple punishment if a veterinarian had treated the horse with more than one drug. Mr. DiMario stated that there could be a perfectly acceptable reason for a veterinarian to treat a horse with two therapeutic medications without any intent to hurt

the horse. On proposed amendment #5 to Rule 8.3.6, Mr. DiMario stated that the horsemen believed the rule should permit two year old horses to run on phenylbutazone (bute). Mr. DiMario indicated that Dr. Moffet agreed that two year olds should be permitted to race and that it was better to treat minor inflammation with bute than to inject another substance into the animal's blood stream.

4. The Commission received public comments from Dr. Peters, Commission veterinarian. Dr. Peters expressed concern over proposed amendment #2 to rules 8.3.2.4 and 8.3.2.5. Dr. Peters believed the rules could result in double penalties against a trainer when there is a positive result for more than one therapeutic drug. Dr. Peters stated that this could occur as a result of an error in administration. Dr. Peters believed that the Commission should only give one penalty in such a case for the most severe violation. Dr. Peters also stated that the proposed bute rule, Rule 8.3.6, should be amended to permit two year olds to race on bute. Dr. Peters stated that bute is just a glorified aspirin.

5. The Commission received a letter from Dr. Jay Baldwin as evidence. Dr. Baldwin stated there has been an increase in the number of horses racing on lasix. Dr. Baldwin noted recent complaints about the number of lasix horses. Dr. Baldwin stated that the faster a horse races, the more likely the horse will bleed with a subsequent increase in lasix use. Dr. Baldwin stated that there has been a significant increase in the number of horses that are now scoped following a race. Finally, Dr. Baldwin stated that there are procedures to ensure that no horse is placed on lasix unless the horse is a severe bleeder and likely to have complications.

Findings of Fact

6. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments. A summary of the evidence is contained in paragraphs #2-5.

7. The Commission has considered the public and written comments received from the public on the proposed rules. The public comments pertained to proposed amendments #2 (rule 8.3.2.4/8.3.2.5) and amendment #5 (rule 8.3.6).

8. The Commission received no public comments regarding proposed amendments #1, #3, #4, #8 through #16, #18, and #20 through #23. The Commission finds these proposed rules are necessary for the regulation of harness racing in the public interest and for the effective enforcement of 3 Del. C. chapter 100. The Commission adopts these rules in their proposed form.

9. As proposed amendment #2, the Commission proposed to amend Rules 8.3.2.4 and 8.3.2.5 to treat class IV and V drugs as therapeutic drugs. The proposed amendment

was recommended by the Ad Hoc Committee based on an extensive evaluation of the treatment of such violations by other jurisdictions. The Ad Hoc Committee also considered the effect of such class IV and V drugs on the performance of the horse. The Commission finds these rules should be adopted in their proposed form. The Commission recognizes the concerns of the public about the possibility of multiple penalties under the rule. The Commission finds the rule should be enforced so as to avoid inequity from positive tests for inadvertent administrations of therapeutic drugs.

10. As proposed amendment #5, the Commission proposed to amend Rule 8.3.6 and 8.3.7 by renumbering them 8.3.5.9 and 8.3.5.10 respectively and to enact a new Rule 8.3.6 to establish acceptable phenylbutazone levels and a penalty schedule for phenylbutazone overages. The Commission finds based on the comments received that the rule should be enacted in its proposed form.

11. As proposed amendment #6, the Commission proposed to amend Rule 8.4.1.1. The proposed amendment to Rule 8.4.1.1.1 would require that at least one horse from the first four positions in each race be tested. The proposed amendment to Rule 8.4.1.1.2 would require the testing of any claimed horse at the request of the claimant. The proposed amendment to Rule 8.4.1.1.3 would require that horses selected for postrace testing be taken to the test barn or test stall so that a blood, urine, or other specimen can be taken. The Commission finds that the amendment to Rule 8.4.1.1.1 on selection of tested horses is necessary for effective enforcement of the Commission's medication program and to deter the administration of illegal drugs or medications. The Commission similarly finds that Rule 8.4.1.1.3 is necessary for the orderly taking of postrace samples. The Commission will adopt Rules 8.4.1.1.1 and 8.4.1.1.3 in their proposed form. The Commission finds the proposed Rule 8.4.1.1.2, regarding testing of claimed horses, may be inconsistent with the terms of the recently passed House Joint Resolution 10. The Commission will defer enactment of the proposed Rule 8.4.1.1.2 at this time.

12. As proposed amendments #7 and #7A, these amendments are alternate proposals to amend the Commission's existing split sample rule for carbon dioxide testing. The Commission finds that the split sample rule is unworkable for carbon dioxide based on the rapid deterioration of the sample and the lack of any available referee laboratory. The Commission notes that there appears to be no other racing jurisdiction in the nation that has a split sample rule for carbon dioxide sample. The Commission notes that the state of Louisiana recently enacted a carbon dioxide testing program which specifically exempts the test samples from the split sample rules. The Commission will take a two step approach on this issue. The Commission adopts proposed amendment #7 immediately to exempt the carbon dioxide samples from the split sample rule. The Commission will also republish a revised proposal similar to

#7A that will provide for testing of both samples at the Commission's laboratory on an anonymous basis.

13. As to proposed amendment #17, the Commission proposed an amendment to Rule 8.5.5 to require a trainer to immediately report the death of any horse drawn to start in a race when the death occurs within sixty (60) days of the draw. The Commission finds the proposed rule to set forth a necessary duty for trainers in order to permit the Commission to investigate the suspicious death of any horse. The Commission will adopt the rule in its proposed form. To avoid any ambiguity, the Commission will issue a directive that the term "immediately" in the rule requires the trainer notify the Commission within four hours of the horse's death.

14. As to proposed amendment #19, the Commission proposed an amendment to Rule 6.3.3.13 to strike the existing first sentence and substitute a provision that claimed horses may be tested postrace at the request of the claimant. The Commission finds that the proposed rule may be inconsistent with the provisions of the recently passed House Joint Resolution 10. The Commission defers adoption of this proposed rule at this time.

15. As to proposed amendment #24, the Commission proposed an amendment to Rule 8.3.6.4 to provide that the penalty schedule for horses that bleed would be limited to a twelve month period. The Commission finds that the proposed amendment would be a significant liberalization of the bleeding rule which is contrary to the practice in surrounding states. The Commission is not convinced there is sufficient medical testimony in this record to support this amendment and the Commission rejects adoption of this amendment.

Conclusions

16. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. §10027.

17. The Commission deems these rules as proposed to be necessary for the effective enforcement of 3 Del. C. chapter 100 and for the full and efficient performance of the duties thereunder.

18. The Commission concludes that the adoption of the proposed rules, with the exceptions noted above, would be in the best interests of the citizens of the State of Delaware and necessary to ensure the integrity and security of harness racing in the State of Delaware.

19. The Commission therefor adopts the following rule amendments pursuant to 3 Del. C. §10027 and 29 Del. C. §10113:

Amendment to Rule 8.3.2.2 (proposed amendment #1).

Amendment to Rules 8.3.2.4 and 8.3.2.5 (proposed amendment #2).

Amendment to Rule 8.3.2 (proposed amendment #3).

Amendment to Rule 8.3.5.7 (proposed amendment #4).

Amendment to Rules 8.3.6, 8.3.7, and 8.3.6 (proposed

amendment #5).

Amendment to Rules 8.4.1.1.1 and 8.4.1.1.3 (proposed amendment #6).

Amendment to Rule 8.4.3.5.10 (proposed amendment #7).

Amendment to Rule 8.3 (proposed amendment #8).

Amendment to Rule 8.3 (proposed amendment #9).

Amendment to Rule 8.3 (proposed amendment #10).

Amendment to Rule 8.3.3.1.2 (proposed amendment #11).

Amendment to Rule 8.3.3.3.1 (proposed amendment #12).

Amendment to Rule 8.3.3.3.2 (proposed amendment #13).

Amendment to Rule 8.3.3.3.3 (proposed amendment #14).

Amendment to Chapter 8.0 (proposed amendment #15).

Amendment to Rule 8.5.2 (proposed amendment #16).

Amendment to Rule 8.5.5.17 (proposed amendment #17).

Amendment to Rule 8.3.3.3.3 (proposed amendment #18).

Amendment to Rule 6.3.3.13 (proposed amendment #19).

Amendment to Rule 6.3.3.13 (proposed amendment #20).

Amendment to Rule 7.6.5.2 (proposed amendment #21).

Amendment to Rule 6.3.3.15 (proposed amendment #22).

Amendment to Rule 7.1.3.6 (proposed amendment #23).

The Commission has considered the comments and suggestions made by the witnesses at the public hearing. These rules replace in their entirety the former version of the Rules of the Delaware State Harness Racing Commission.

20. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on May 1, 2000.

21. The Commission will publish notice of a further proposed amendment to the following rule:

Amendment to Rule 8.4.3.5.10.

Attached hereto and incorporated herein is the amended Rules marked as Exhibit A and executed simultaneously this 10th day of April, 2000.

IT IS SO ORDERED this 10th day of April, 2000.

Anthony Flynn, Chairman

H. Terry Johnson, Commissioner

Beth Steele, Commissioner

Mary Ann Lambertson, Commissioner

Robert Kerr, Commissioner

6.3 Claiming Race**6.3.1 General Provisions**

6.3.1.1 No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary at least one hour prior to post time of its race. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was

scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his/her option by 9:00 a.m. of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his/her option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse shall be allowed access to the grounds of the association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid on day of issue and expire at the end of the race meeting for which it was granted. These certificates may be applied for at the office designated by the association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

6.3.2 Prohibitions on Claim

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare

pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

1 DE Reg. 503 (01/11/97)

6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, in the form of cash or certified check, on deposit with the association at the time the completed claim form is deposited. Such deposit also may be made by wire transfer prior to 2:00 p.m. on the day of the claiming race.

6.3.3.2 The claimant shall provide all information required on the claim form provided by the association.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least fifteen (15) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, the current license status of the claimant and whether credit in the required amount has been established.

6.3.3.5 It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The association's auditor, or his/her agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include

details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 ~~A post-race urinalysis test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race urine sample is collected. Any claimed horse not otherwise selected for testing by the State Steward or judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules.~~ The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation[,] and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

6.3.3.15 A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse

was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or out of another claiming race. Further, such horse shall be required to continue to race at the track where claimed for a period of ~~45~~ 60 days or the balance of the current racing meet, whichever comes first, unless released by the Racing Secretary

2 DE Reg. 1765 (01/01/98)

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration and eligibility certificates have been received by the racing secretary for transfer to the new owner.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

2 DE Reg. 1243 (01/01/99)

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

2 DE Reg. 1243 (01/01/99)

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his/her possession.

7.1 Declarations and Drawing

7.1.1 Declarations

7.1.1.1 Unless otherwise specified in the conditions, the declaration time shall be as follows:

7.1.1.1.1 Extended pari-mutuel meetings, 9:00 a.m.

7.1.1.1.2 All other meetings, 10:00 a.m.

7.1.1.2 The time when declarations close will be considered to be local time at the track where the race is being contested.

7.1.1.3 No horse shall be permitted to start in more than one race on any one racing day. Races decided by more than one heat are considered a single race.

7.1.1.4 The association shall provide a locked box with an aperture through which declarations shall be deposited.

7.1.1.5 The Presiding Judge shall be in charge of the declaration box.

7.1.1.6 Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the Presiding Judge shall check with the racing secretary to ascertain if any declarations by mail, telegraph, facsimile machine or otherwise, are in the office and not deposited in the entry box, and shall see that they are declared and drawn in the proper event. At other meetings, the Presiding Judge shall ascertain if any such declarations have been received by the speed superintendent or racing secretary of the fair, and shall see that they are properly declared and drawn.

7.1.2 Drawing

7.1.2.1 The entry box shall be opened at the advertised time by the Presiding Judge, who shall ensure that at least one horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the Presiding Judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges, or by a person designated by the Presiding Judge, for whose acts and conduct Presiding Judge shall be wholly responsible. If a substitution is made as herein provided, the name and address of the associate judge(s) or person so substituting shall be entered in the Judges' Book.

At extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges who shall have been designated by the Presiding Judge, prior to the start of the meeting, in the form of a written notice to the Commission and to the association conducting the meeting. A record shall be kept in the Judges' Book showing the name of the individual who performed such functions on each day of the meeting.

7.1.2.3 In races of a duration of more than one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

7.1.2.4 Declarations by mail, telegraph, facsimile machine or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telegraph, facsimile machine and telephone declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the driver's name and racing colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

7.1.2.5 Failure to declare as required shall be considered a withdrawal from the event.

7.1.2.6 After declaration to start has been made no horse shall be withdrawn except by permission of the judges. A fine, not to exceed \$500, or suspension may be imposed for withdrawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.

7.1.2.7 Where the person making the declaration fails to honor it and there is no opportunity for a hearing by the judges, this penalty may be imposed by the commission representative.

7.1.2.8 Where a horse properly declared is omitted from the race by error of the association, the race shall be redrawn; provided, however, that the error is discovered prior to the publication of the official program.

7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.1.3 Qualifying Race

7.1.3.1 Qualifying races and starting gate schooling shall be held according to the demand as determined by the Presiding Judge or State Steward.

7.1.3.2 Qualifying standards shall be set at each track by the racing secretary and the judges. These may vary at different times of the year to accommodate weather and the class of horse available. Standards for trotters will be two seconds slower than pacers.

7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

7.1.3.3.1 Before racing at a chosen gait, a horse must go a qualifying race at that gait under the supervision of a licensed judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate

chart information on time and beaten lengths, a standard photo finish shall be in use.

7.1.3.3.2 Any horse that fails to race within thirty (30) days of its last start must go a qualifying race as set forth in a) above. However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission. The time period allowed shall be calculated from the date of the last race to and including the date of declaration. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

7.1.3.3.3 When a horse has raced at a charted meeting and then gone to meetings where the races are not charted the information from the uncharted lines may be summarized including each start and consolidated in favor of charted lines to include a charted line within the last thirty (30) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish, track condition and distance.

7.1.3.3.4 The judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race.

7.1.3.3.5 When, for the purpose of qualifying the driver, a horse is declared in to race in a qualifying race, its performance shall be applicable to the horse's eligibility to race and the chart line shall be notated to indicate driver qualifying.

7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.

7.1.3.4 Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared.

7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely equipment breaks and/or were caused solely by interference and/or track conditions.

7.1.3.6 A horse must qualify if:

~~7.1.3.6.1 it is distanced for reasons other than interference, broken equipment or breaking stride; or~~

~~7.1.3.6.2 it does not finish for reasons other than interference or broken equipment.~~

7.1.3.7 A charted line containing only a break or breaks caused by interference or an equipment break shall be considered a satisfactory charted line.

7.1.3.8 The judges shall use the interference break mark only when they have reason to believe that the horse was interfered with by another horse or the equipment of another horse.

7.1.3.9 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.

7.1.4 Coupled Entries

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the association, made through the State Steward, and with the approval of the Commission, be permitted to race as separate entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

7.1.5 Also Eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due

to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

7.1.6 Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

7.1.6.1 The date of the horse's last previous start in a purse race during the current year is its preference date with the following exceptions:

7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

7.1.6.1.2 When a horse is racing for the first time after February 1 in the current year, the date of the first declaration into a purse race shall be considered its preference date.

7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by lot.

7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

7.6 Racing Rules

7.6.1 Under Supervision of Starter

7.6.1.1 Horses shall be under supervision of the starter from the time they arrive on the track until the start of the race.

7.6.1.2 All horses shall parade from the paddock to the starting post, and no driver shall dismount without the permission of the starter. Attendants may not care for the horses during the parade except by permission of the starter.

7.6.1.3 After entering the track not more than ten (10) minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay.

7.6.1.4 Horses awaiting post time may not be held on the backstretch in excess of five (5) minutes, except when delayed by an emergency.

7.6.2 Pre-Race Accidents

When, before a race starts:

7.6.2.1 A horse is a runaway or is otherwise involved in an accident, such horse shall be examined by the racing veterinarian and if the horse is not ordered scratched

by the veterinarian, the judges may permit the horse to compete and have this decision announced.

7.6.2.2 A driver is unseated and appears to have been injured, the horse that was being driven by that driver may compete with a substitute driver.

7.6.2.3 If a horse is scratched in error and cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.

7.6.3 Fair Start

The starter shall give such orders and take such measures that do not conflict with the rules of racing, as are necessary to secure a fair start.

7.6.4 Starter's Duties

7.6.4.1 The starter shall be in the starting gate ten (10) minutes before the post time of the race.

7.6.4.2 The starter shall have control over the horses and authority to assess fines and/or suspend drivers for any violation of the rules from the formation of the parade until the word "go" is given.

7.6.4.3 The starter may assist in placing the horses when requested by the judges to do so.

7.6.4.4 The starter shall notify the judges and the drivers in writing of penalties imposed by him/her.

7.6.5 Starting

7.6.5.1 The starter shall have control of the formation of the parade until giving the word "go".

7.6.5.2 After ~~one or two preliminary~~ warming up scores, the starter shall notify the drivers to come to the starting gate. ~~During or before the parade the drivers must be informed as to the number of scores permitted.~~

7.6.5.3 The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.

7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:

7.6.5.4.1 For the first one-eighth of a mile, not less than 11 miles per hour.

7.6.5.4.2 For the next one-sixteenth of a mile, not less than 18 miles per hour.

7.6.5.4.3 From that point to the starting point, the speed will be gradually increased to maximum speed.

7.6.5.4.4 On mile tracks horses will be brought to the starting gate at the head of the stretch and the relative speeds mentioned in a), b) and c) above will be maintained.

7.6.5.5 The starting point will be a point marked at a designated spot not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.

7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case

of a recall.

7.6.6 Recall Rules

7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his/her discretion to close the wings of the gate.

7.6.6.2 There shall be no recall after the word "go" has been given unless there is a mechanical failure of the starting gate.

7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse after the recall point is passed.

7.6.6.4 In the event a horse causes two recalls, it may be an automatic ruling of the judges that the offending horse be scratched.

7.6.6.5 The starter may sound a recall for the following reasons:

7.6.6.5.1 A horse scores ahead of the gate;

7.6.6.5.2 There is interference;

7.6.6.5.3 A horse has broken equipment;

7.6.6.5.4 A horse falls before the word "go" is given; or

7.6.6.5.5 A mechanical failure of the starting gate.

7.6.6.6 There shall be a recall pole placed one-eighth of a mile before the starting point, before or at which point, at the discretion of the starter, there may be a recall for a breaking horse or horses not up to the gate. When the recall pole is passed, there shall be no recall for a breaking horse or a horse not up to the gate except as provided in 7.6.6.5.1 - 7.6.6.5.5 above. Horses not up to the gate in position due to the fault of the driver may result in the driver being penalized by the starter.

7.6.6.7 A fine and/or suspension may be applied to any driver for:

7.6.6.7.1 Delaying the start;

7.6.6.7.2 Failure to obey the starter's instructions

7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;

7.6.6.7.4 Coming to the starting gate out of position;

7.6.6.7.5 Crossing over before reaching the starting point;

7.6.6.7.6 Interference with another driver during the start; or

7.6.6.7.7 Failure to come up into position.

7.6.7 Starting Gate

7.6.7.1 No persons shall be allowed to ride in the starting gate except the starter and the driver or operator and

a patrol judge, unless permission has been granted by the State Steward.

7.6.7.2 Use of the mechanical loudspeaker for any purpose other than to give instructions to the drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.

7.6.7.3 The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse, and such arms shall be perpendicular to the rail.

7.6.7.4 The official starter must ensure that the starting gate is in good working order prior to the beginning of each race program.

7.6.7.5 The official starter and starting gate driver shall operate the starting gate in a manner consistent with the safe conduct of the race, the safety of the race participants and the safety of the patrons.

7.6.8 Two-Tiered Races

7.6.8.1 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the positions of horses that have drawn or entered positions in the second tier.

7.6.8.2 Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the front tier so long as it does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.6.9 Starting Without a Gate

7.6.9.1 When horses are started without a gate the starter shall have control of the horses from the formation of the parade until giving the word "go". The starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go" shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming-up scores, the starter shall notify the drivers to form in parade.

7.6.9.2 The driver of any horse refusing or failing to follow the instructions of the starter as to the parade or scoring ahead of the pole horse may be set down for the heat in which the offense occurs, or for such other period as the starter shall determine, and may be fined. Whenever a driver is taken down, the substitute shall be permitted to score the horse once. A horse delaying the race may be started regardless of its position or gait and there shall not be a recall because of a bad acting horse. If the word "go" is not given, all the horses in the race shall immediately turn on signal, and jog back to their parade positions for a fresh start. There shall be no recall after the starting word is given.

7.6.10 Horse Deemed a Starter

Horses shall be deemed to have started when the word "go" is given by the starter and all horses must go the course except in the case of an accident in which it is the opinion of the judges that it is impossible to go the course.

7.6.11 Unmanageable/Bad Acting Horses

7.6.11.1 If, in the opinion(s) of the judges and/or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the judges who will in turn notify the public and order any refunds as may be required in Rule 10 of these rules.

7.6.11.2 The starter may place a bad acting horse on the outside at his/her discretion. Such action may be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.

7.6.12 Post Positions, Heat Racing

7.6.12.1 The horse winning a heat shall take the inside position in the succeeding heat, unless otherwise specified in the published conditions of the race, and all others shall take their positions in the order they were placed in the prior heat.

7.6.12.2 When two or more horses dead heat, their positions shall be determined by lot.

7.6.13 Conduct of the Race

7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:

7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his or her horse back, or pull his/her horse out of its stride.

7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.

7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.

7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.

7.6.13.1.6 Carry another horse out.

7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.

7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his/her overall position.

7.6.13.1.9 Strike or hook wheels with another sulky

7.6.13.1.10 Lay off a normal pace and leave a

hole when it is well within the horse's capacity to keep the hole closed.

7.6.13.1.11 Drive in a careless or reckless manner

7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he/she is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

7.6.13.1.13 Riding 'half-in' or 'half-out'.

7.6.13.1.14 Kicking a horse.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.

7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.

7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.

7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.

7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in

his/her conduct and endangers the safety of horses or other drivers in a race, he/she shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.

7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.

7.6.13.12 Shouting or other improper conduct in a race is forbidden.

7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

7.6.13.14 Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length.

Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply.

1 DE Reg. 923 (01/01/98), 2 DE Reg. 684 (10/01/98)

7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an association shall constitute a violation.

7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

7.6.13.18 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.

1 DE Reg. 923 (01/01/98)

7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.

7.6.13.20 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.20.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.20.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.20.3 Failure to lose ground while on a break.

If no violation has been committed, the horse shall not be set back unless a contending horse on his/her gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.

7.6.13.21 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

7.6.13.22 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

7.6.13.23 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

7.6.13.24 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

7.6.13.25 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the State Steward or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

7.6.13.26 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

7.6.14 Hubrail

If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by going inside the hub rail or other demarcation which constitutes the inside limits of the course, the offending horse shall be placed one or more positions

where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse or any portion of a sulky inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

7.6.15 Extended Homestretch

7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.

7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:

7.6.15.2.1 no horse shall pass on the extended inside lane except when entering the stretch for the final time;

7.6.15.2.2 the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane; and

7.6.15.2.3 horses using the open stretch must first have complete clearance of the pylons. Any horse or sulky running over the pylons and/or going to the inside of the pylons to clear shall be disqualified.

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

8.2 Veterinary Practices

8.2.1 Veterinarians Under Authority of ~~State~~ Commission ~~Veterinarian~~

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the ~~State~~ Commission ~~Veterinarian~~ and the State Steward. Without limiting the authority of the State Steward to enforce these Rules, the ~~State~~ Commission ~~Veterinarian~~ may recommend to the State Steward or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

8.2.2 Treatment Restrictions

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the State Steward, judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the State Steward, judges and/or the Commission.

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and may impose penalties and disciplinary measures consistent with the recommendations contained in subsection B of this section. ~~The State Steward may also consult with the official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation; provided, however, that in the event the State Steward determines that mitigating circumstances require imposition of a lesser penalty, he may impose the lesser penalty. In the event the State Steward wishes to impose a greater penalty or a penalty in excess of the authority granted him, then, and in such event, he may impose the maximum penalty authorized and refer the matter to the Commission with specific recommendations for further~~

~~action. At the discretion of the State Steward, a horse alleged to have tested positive for a prohibited substance may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward of the meeting, be released to the care of another licensed trainer, and may race.~~

8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the State Commission ~~veterinarian~~ and the racing secretary.

8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

Drugs in this class may or may not

have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory

drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous

anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

8.3.1.4.9.3 Miscellaneous

cardiotonic drugs.

8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

8.3.2 Penalty Recommendations

In the absence of aggravating or mitigating circumstances, the following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1--One to five years suspension and at least \$5,000 fine and loss of purse.

8.3.2.2 Class 2-- Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.

8.3.2.3 Class 3--Sixty days to six months suspension and up to \$1,500 fine and loss of purse.

8.3.2.4 Class 4--~~Fifteen to 60 days suspension and up to \$1,000 fine and loss of purse.~~

8.3.2.4.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Fifteen to 50 days suspension and up to \$1,000 fine and loss of purse.

8.3.2.4.2 If the substance is detected in a urine sample but not in a blood sample:

8.3.2.4.2.1 And if such detection is the first violation of this chapter within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.2.4.2.2 And if such detection is the second violation of this chapter within a 12-month

period: Up to a \$1,000 fine and loss of purse.

8.3.2.4.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.3.2.5 Class 5 --Zero to 15 days suspension with a possible loss of purse and/or fine.

8.3.2.5.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with the testing procedures: Zero to 15 days suspension and up to a \$250 fine and loss of purse.

8.3.2.5.2 If the substance is detected in a urine sample but not in a blood sample:

8.3.2.5.2.1 And if such detection is the first violation of this chapter within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.2.5.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.2.5.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

Where aggravating or mitigating circumstances exist, greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. In particular, in the presence of aggravating circumstances -- including but not limited to (1) repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse; (2) prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or (3) violations which endanger the life or health of the horse -- greater penalties, up to and including lifetime suspension, may be imposed.

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Where aggravating or mitigating circumstances exist, greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determine that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only

impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or

8.3.2.6.3 Violations which endanger the life or health of the horse.

8.3.2.7 With respect to Class 1, 2 and 3 drugs detected in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take into consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the ~~published~~ limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any

restricted medication pursuant to this chapter during the 48 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission;

8.3.3.3.2 therapeutic medications in excess of ~~established acceptable levels~~ acceptable limits established in these rules or otherwise approved and published by the Commission;

8.3.3.3.3 substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to ~~procedures to be established by the Commission~~ such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to Class 2 substance.

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8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication,

chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (Lasix)

8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the State veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the State veterinarian has placed the horse on the Bleeder List.

8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the State Commission ~~veterinarian~~ determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of administration, then the trainer shall be subject to a fine or other disciplinary action;

8.3.5.3.2 Not more than 750

milligrams may be administered if (1) the State veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.3 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the State veterinarian.

8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined. If a horse is late at the Lasix stall a second consecutive time, the horse will be scratched and removed from the Bleeder List, and placed on the Steward's List for ten (10) days.

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (Lasix) in oral form.

8.3.5.7 Post-Race Quantification

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Lasix per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Lasix:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the

third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

8.3.6 ~~5.9~~ Bleeder List

8.3.6 ~~5.9.1~~ The State Commission veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.6 ~~5.9.1.1~~ visual examination wherein blood is noted in one or both nostrils either:

8.3.6 ~~5.9.1.1.1~~ during a race;

8.3.6 ~~5.9.1.1.2~~ immediately post-race or post-exercise on track; or

8.3.6 ~~5.9.1.1.3~~ within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.6 ~~5.9.1.2~~ endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the State Commission veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.6 ~~5.9.1.3~~ presentation to the State Commission veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the State veterinarian.

8.3.6 ~~5.9.2~~ The confirmation of a bleeder horse must be certified in writing by the State Commission veterinarian or the Lasix veterinarian and

entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.6. 5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.6. 5.9.4 A horse which bleeds in a twelve month period based on the criteria set forth in 8.3.6. 5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.6. 5.9.4.1 1st time - 10 days;

8.3.6. 5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.6. 5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the State Commission veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.6. 5.9.4.4 4th time - barred for life.

8.3.6. 5.9.5 An owner or trainer must notify the State Commission veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.6. 5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.6. 5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the State Commission veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.6. 5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder

List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.6. 5.9.9 The State Steward or Presiding Judge, in consultation with the State Commission veterinarian, will rule on any questions relating to the Bleeder List.

8.3.7 5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the State Commission veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone _____ or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then ~~the~~ warning[s] shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-

steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.4 Testing

8.4.1 Reporting to the Test Barn

~~8.4.1.1 The official winning horse and any other horse ordered by the Commission and/or the State Steward or judges shall be taken to the Test Barn to have a blood, urine and/or other specimen sample taken at the direction of the State Commission veterinarian. Horses shall be selected for post-racing testing according to the following protocol:~~

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Any claimed horse not otherwise selected for testing shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules. If such a request is made by a claimant, then the claimed horse shall not be permitted to be entered to race until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse.

8.4.1.1.3 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the State Commission veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the State Commission veterinarian.

8.4.2.2 The State Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission veterinarian. Only the owner, trainer, groom or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission

veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness

8.4.3.5.2 The Commission veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The “secondary” sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the “primary” sample delivered contains no prohibited drug, the “secondary” sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the “primary” sample and will be tested as other “primary” samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the “primary” and one for the “secondary” sample.

8.4.3.5.10 In the event of an initial finding of a prohibited ~~drug substance~~ or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the “secondary” sample; provided, however, that the procedure for testing the ‘secondary’ sample shall not apply to, and there shall be no right to such testing of a ‘secondary’ sample with respect to, a finding of a prohibited level of total carbon dioxide in a submitted blood sample. ~~provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the ‘secondary’ sample unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstances the ‘secondary’ sample shall be transported to a referee laboratory designated by the Commission for testing.~~

8.4.3.5.10.1 If testing of the “secondary” sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission

chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the “secondary” samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the “secondary” sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

1 DE Reg. 505 (11/01/97)

8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the

maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2 A trainer shall prevent the administration of any drug or medication or other ~~prohibited~~ foreign substance that may cause a violation of these rules.

8.5.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the racing secretary;

8.5.5.6 promptly reporting to the racing secretary and the State Commission veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the State Commission veterinarian of any reportable disease and any

unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the State Stewards and judges, the State Commission veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the State Steward, judges and the State Commission veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge; ~~and~~

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the State Steward or other Commission designee, or to the State Veterinarian or Commission Veterinarian if the State Steward or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

8.6.1.1 The State Commission veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the State Commission veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

8.6.2.3 The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.

8.6.2.4 The presence of a prohibited substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 Del.C. 10103)

Order

Pursuant to 29 Del. C. §10118, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order adopting part of the proposed amendments to the Commission's Rules. Following notice as required by 29 Del. C. §10115, the Commission makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Commission posted public notice of the proposed rule amendments in the January 1, 2000 Register of Regulations. A copy of the proposed rule amendments is attached to this Order as exhibit #1. The Commission proposed amendments to Rule 19.03 and Rule 19.06(a).

2. The Commission received no written comments from the public in response to the posted rule proposals.

Findings of Fact

3. The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed amendments to the Commission's rules. The Commission received no public comments.

4. On the proposed amendment to Rule 19.03(a), the amended Rule would require that all appeals from decisions of the Stewards to the Commission must be filed with the Commission's Administrator of Racing. Rule 19.03(h) would be amended to add a new requirement that an appeal contain a sworn, notarized statement from the appellant stating that the appeal is taken in good faith and not for purposes of delay.

5. On the proposed amendment to Rule 19.06(a), the amended Rule would require that all requests for continuances must be filed with the Administrator of Racing with a copy sent to counsel for the Stewards. Rule 19.06(a) would be further amended to provide that the Commission will not consider continuance requests from attorneys who have not filed an entry of appearance. Rule 19.06(a) would further provide that all out-of-state attorneys must first be admitted under the pro hac vice provisions of Delaware Supreme Court Rule 72 before the Commission will consider a continuance request.

6. The Commission finds that the proposed amendments to Rule 19.03 are necessary for the more efficient processing and handling of appeals. The proposed amendment to Rule 19.03 also addresses licensees who wish attempt to appeal decisions of the stewards merely for the purpose of delay. Rule 19.06(a) as amended would address a problem of licensees requesting continuances on the day of the scheduled Commission hearing. Both of these proposed amendments are needed to improve the Commission's timely handling of appeals from the stewards' decisions.

Conclusions

7. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. §10103. The Commission deems these rules as amended necessary for the effective enforcement of 3 Del. C. chapter 101 and for the full and efficient performance of its duties thereunder.

8. The Commission concludes that the adoption of the proposed rules would be in the best interests of the citizens of the State of Delaware and necessary to insure the integrity and security of the conduct of thoroughbred racing in the State of Delaware. The Commission adopts amendments to Rules 19.03(a) and 19.06(a) in their proposed form.

9. The Commission adopts these rules pursuant to 3 Del. C. §10103 and 29 Del. C. §10113. These adopted rules replace in their entirety the former version of the Rules of the Delaware State Thoroughbred Racing Commission and any amendments.

10. The effective date of this Order shall be ten (10) days from the publication of this Order in the Register of Regulations on May 1, 2000.

IT IS SO ORDERED this 5th day of April, 2000.

Bernard Daney, Chairman
Duncan Patterson, Commissioner
James Decker, Commissioner
Caroline Wilson, Commissioner

19.03 Application for Review

An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

- (a) Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee in the amount of \$250;
- (b) Contain the signature of the applicant and the address to which notices may be mailed to applicant;
- (c) Set forth the order or ruling requested to be reviewed and the date thereof;
- (d) Succinctly set forth the reasons for making such application;
- (e) Request a hearing;
- (f) Briefly set forth the relief sought;
- (g) Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and
- (h) Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

19.06 Continuances

(a) All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorney must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

(b) When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(c) An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

(d) If the Commission approves the application for continuance, it shall concurrently with such postponement, set a date for the continued hearing.

DEPARTMENT OF EDUCATION

Statutory Authority 14 Delaware Code, Section
122(d) (14 Del.C. 122(d))

Regulatory Implementing Order

Credit for Experience for Administrators, Teachers and Secretaries School Food Service Employees Substitutes

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to amend seven regulations from the *Handbook of Personnel Administration for Delaware School Districts* by reducing them to three regulations, Credit for Experience for Administrators, Teachers and Secretaries, School Food Service Employees, and Substitutes. The regulations on Administrative and Supervisory Personnel, Classroom Teachers, Specialists and Therapists, and the regulation on Secretaries have been combined into one regulation. The regulations for School Food Service Employees and Substitutes are amended but are still separate regulations. The content of the regulations on School Nurses and on Attendants and Aides has been placed in the regulations on Children with Disabilities and in the Transportation regulations.

Administrative and Supervisory Personnel, Page 11-2, has been amended to remove the first three paragraphs, which are in the *Del. C.* The fourth paragraph on credit for experience has been combined in a new regulation Credit for Experience for Administrators, Teachers and Secretaries.

Classroom Teachers, Specialists and Therapists, Pages 11-6 through the first five lines of page 11-10 (The balance of page 11-10 and page 11-11 have already been acted on by the Secretary and the Board) has been amended to remove all of the paragraphs that repeat the *Del. C.* The last paragraph on page 11-6 although not in *Del. C.* in 1981 when adopted as State Board policy is now in 14 *Del. C.*, Section 1312 (c.).

The third paragraph from the top of page 11-6 on teacher experience is retained and the language is updated. Gifted and Talented referred to on page 11-9 is now addressed in 14 *Del. C.*, Section 1716 (c) Academic Excellence Units.

School Nurses, Page 11-12 has been amended to remove all paragraphs but the fifth paragraph which deals with units for students with disabilities. The fifth paragraph is now in the regulations on Children with Disabilities Section 26 Funding Issues for Children with Disabilities and the other paragraphs are addressed in the *Del. C.*

Secretaries, Pages 11-13 and 11-14 has been amended to remove all paragraphs but the first one which addresses allowable experience toward salary calculations. This paragraph has been placed in the regulation Credit for Experience for Administrators, Teachers and Secretaries and now allows one year's experience for each creditable year of experience in private business, public schools or other governmental agency. The new wording removes the word "full" and replaces it with "creditable." The other paragraphs are found in the *Del. C.*

School Food Service Employees, pages 11-20 through 11-23 has been amended to change the word "full" year of experience to "creditable" in the second line under Experience. The sections of the regulation under Allocation, Salaries, Months of Employment, Determination of Employee Staffing and Salary Formula, Fringe Benefits Food Service Training and Food Service Management Technology Program have been amended to remove the *Del. C.* references and the technical assistance statements and to bring the language in line with present *Del. C.* and Department of Education procedures where appropriate. The Health Regulations are removed from this regulation because school employees are covered under existing regulations on Tuberculin Tests and Physical Examinations.

Attendants and Aides, Pages 11-24 - 11-25 has been amended to remove the *Del. C.* references in the Eligibility for Employment, Allocation, Salaries and Months of Employment Sections and to then place the regulations concerning classroom aides for students with disabilities in the Special Education Regulations, Section 26 Funding Issues for Children with Disabilities. The regulations concerning transportation aides for students with disabilities is in the Transportation Regulations, Section 19. The last section Job Definition is being removed from the regulations, as job descriptions are no longer required.

Substitutes, Pages 11-26 and 11-27 has been amended to remove the *Del. C.* references and to change the existing section 1. f., removing the reference to "New Directions" and referring to "Department of Education initiated committee work and project assignments" instead. The other parts that define when substitutes can be used and how they are paid remain the same with some changes in the wording.

Notice of the proposed regulation was published in the

News Journal and the Delaware State News on March 13, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend these regulations because of the need to remove the references to the *Delaware Code*, eliminate technical assistance references, reflect current practice and update the language.

III. Decision to Amend the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.*, Chapter 13, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.*, Section 122(e), the amended regulations shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Chapter 13, in open session at the said Board's regularly scheduled meeting on April 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of April, 2000.

DEPARTMENT OF EDUCATION

Valerie A Woodruff

Acting Secretary of Education

Approved this 20th day of April, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage
Dr. Claibourne D. Smith

AS AMENDED

Credit for Experience for Administrators, Teachers and Secretaries

1.0 Administrators: No credit shall be given for part time employment in Administrative and Supervisory positions.

2.0 Teachers: Days taught as a substitute or as a teacher's aide may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.

2.1 As used in this instance, a "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during a period of 12 consecutive months.

3.0 Secretaries: Secretaries may be granted one (1) year's experience for each creditable year of experience as a secretary in private business, public school, or other governmental agency.

4.0 Creditable experience includes experience obtained while working outside of Delaware.

4.1 This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination of creditable experience for pension purposes which is specified in 29 Del. C., Chapter 55.

Laws on employment and salary for administrators, teachers, and secretaries are found in 14 Del. C., Chapter 13.

AS AMENDED

School Food Service Employees

1.0 Experience: School food service employees may be granted one (1) year's experience for each creditable year of experience in similar employment.

2.0 Determination of Employee Staffing and Formula

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

2.1.1 Of the total number of full time workers assigned to a food-preparing cafeteria, a maximum of two may be paid as a cook/baker. Satellite schools are eligible for positions as set forth in 14 Del. C., Section 1322 (c) state funded.

3.0 The salaries prescribed in 14 Del. C., Section 1322(e) for general workers, and cooks/bakers shall be paid by the State from funds not derived from local food service operations as determined by the formula:

3.1 Seven (7) hours of labor per 100 meals determined as follows:

3.1.1 Total number of reimbursable lunches served in the base month; plus

3.1.2 Total number of reimbursable breakfasts served in the base month; plus

3.1.3 Total of all other meals served in the base month determined by aggregating all income.

3.1.3.1 The number of meals prepared and served will be based on the average reported for the month of October on the monthly reimbursement claim.

3.2 Each school district will submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.

3.3 Each school district will submit a roster of cafeteria managers to the Department of Education showing names of employees and the salaries prescribed in 14 Del. C., Section 1322(a). Each district shall also submit a computation sheet as prescribed by the Department to determine the number of meals served according to the state formula.

AS AMENDED

Substitutes

1.0 Payment of Teacher and Other School Employee Substitutes

1.1 Substitutes for State funded teachers may be paid from State substitute teacher funds under the provisions of 14 Del. C., Section 1318 – Sick leave and absences for other reasons (only specified reasons allowable), Title 29, Section 5524 – Eligibility for disability pension and Title 29, Section 5933 – Leaves (sick leave not counted for absence for work-related disease or accident).

1.2 Substitutes for state funded teachers may also be paid from State substitute teacher funds for:

1.2.1 Military leave (training or duty not in excess of 15 days).

1.2.2 Kindergarten Teachers on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for ½ day on abbreviated days when kindergarten is scheduled.

1.2.3 Teachers participating in Department of Education initiated committee work and project assignments.

1.3 Substitutes for teachers absent under the provisions of 14 Del. C., Section 1320, Deduction for Unexcused Absence (or on approved leave without pay) may be charged to the Division I teacher salary line.

1.4 Substitutes for teachers who are paid from federal funds are to be paid from federal funds from the federal program involved or local funds.

1.5 Substitutes for teachers who are paid from

local funds are to be paid from local funds.

1.6 Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds are to be paid on the same proportional basis from State substitute teacher funds.

1.7 Substitutes are to be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in 14 Del. C., Section 1326. School districts paying more for teacher substitutes than prescribed in Section 1326 shall do so from local or federal funds.

Regulatory Implementing Order

Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to adopt the regulation Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification. This regulation permits the Department of Education to grant licensure to persons from other states who hold a current certificate from the National Board for Professional Teaching Standards (NBPTS) by waiving the pre-licensure requirements of Chapters I, II, and III of the General Regulations of the *Manual for Certification of Professional Public School Personnel*, including the PRAXIS I requirement. The applicant must still comply with the application process requirements of Chapter IV of the same document

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 13, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements. A letter was received from the Governor's Advisory Council for Exceptional Citizens opposing approval of this regulation. No reasons were stated.

II. Findings of Fact

The Acting Secretary finds that it is necessary to adopt this new regulation because Delaware wants to honor National Board Certification as a standard for licensure in Delaware.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Acting Secretary

concludes that it is necessary to adopt this new regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby adopted. Pursuant to the provisions of 14 Del. C., Section 122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation adopted hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on April 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of April, 2000.

DEPARTMENT OF EDUCATION

Valerie A Woodruff
Acting Secretary of Education

Approved this 20th day of April, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

AS AMENDED

Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification

1.0 An applicant who holds a current certificate from the National Board for Professional Teaching Standards (NBPTS) shall comply with the application process requirements of Chapter IV of the General Regulations of the Manual for Certification of Professional Public School Personnel. The pre-licensure requirements contained in Chapters, I, II, and III of the General Regulations of the Manual for Certification of Professional Public School

Personnel are waived for such an applicant. The Department will determine the appropriate state certificate(s) to be issued based upon the national certifications held by the applicant.

**Regulatory Implementing Order
Regulations for K-12 Guidance Programs**

I. Summary of the Evidence and Information Submitted

The Acting Secretary seeks the consent of the State Board of Education to amend the regulations for K-12 Guidance Programs, page A-23 and Appendix B in the *Handbook for K-12 Education*. The amended version of the regulations will still require local school districts to have a plan for their K-12 Counseling Program but the plan will now be based on the nine standards identified in the National Standards for School Counseling Programs developed by the American School Counselors Association. The plan will no longer have to be sent to the Department of Education for approval. The plan must be reviewed and updated every three years by the district and the district plan must be incorporated in the individual school improvement plans that are reviewed as part of the Quality Review Process. The title of the regulations has also been changed to K-12 School Counseling Program instead of School Guidance Program.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 13, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend these regulations because although districts need to have a guidance plan for their district and schools the Department no longer needs to review the plan or dictate the specific elements of the plan. The amended regulations do require that the district use the National Standards for School Counseling Programs as the basis for their plan and that the plan be reviewed every three years. It also requires that the individual school improvement plans incorporate the district plan for K-12 Counseling Programs. Because of concerns expressed by the State Board and the State Council for Persons with Disabilities the original version of the amended regulations has been strengthened. The district plans must include the National Standards for School Counseling Programs, must be reviewed every three years, and must be incorporated in the school improvement plans.

III. Decision to Amend the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.*, Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.*, Section 122(e), the amended regulations shall be in effect for a period of five years from the effective date of this order as set forth in Section V below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the document entitled the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.*, Section 122, in open session at the said Board's regularly scheduled meeting on April 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of April, 2000.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff
Acting Secretary of Education

Approved this 20th day of April, 2000.

STATE BOARD OF EDUCATION
Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

AS AMENDED

K-12 School Counseling Program

1.0 Each local school district shall have a written plan for the district's school counseling program. The Plan shall:

1.1 Include the American School Counselors Association's National Standards for School Counseling Programs in the areas of Academic Development, Career Development and Personal/Social Development.

1.2 Be on file in the district office.

1.3 Be reviewed and updated by the local school district every three (3) years.

1.4 Be incorporated in the individual school improvement plans that are reviewed as part of the Quality Review process.

**Regulatory Implementing Order
Regulation on Career Guidance and Placement
Counselors**

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the regulation, Career Guidance and Placement Counselors, pages A-24 and A-25 in the *Handbook for K-12 Education*. The existing regulation defines very specifically what the person must do in this type of position. The repeal is recommended because the position is no longer funded from a line item in the budget. Now, if the district chooses to employ such a person, the funding for the position comes from their academic excellence units. There are existing certification requirements for Career Guidance and Placement Counselors which will help to define this counselor's role in the school. It is no longer appropriate for the Department of Education to write a job description for the position when the funding source and process has changed.

Notice of the proposed repeal was published in the News Journal and the Delaware State News on March 13, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to repeal this regulation because there is no longer a need to specifically define the role of the Career Guidance and Placement Counselor.

III. Decision to Repeal the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to repeal the regulation. Therefore, pursuant to 14 *Del. C.*, Section 122, the regulation attached hereto as Exhibit B is hereby repealed.

IV. Text and Citation

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be removed from the *Handbook for K-12 Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Section 122, in open session at the said Board's regularly scheduled meeting on April 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of April, 2000.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff
Acting Secretary of Education

Approved this 20th day of April, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
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Dennis J. Savage
Dr. Claibourne D. Smith

**CAREER GUIDANCE AND PLACEMENT
COUNSELORS**

The Secretary seeks the consent of the State Board of Education to repeal the regulation, Career Guidance and Placement Counselors, pages A-24 and A-25 in the *Handbook for K-12 Education*. The existing regulation defines very specifically what the person must do in this type of position. The repeal is recommended because the position is no longer funded from a line item in the budget. Now if the district chooses to employ such a person, the funding for the position comes from their academic excellence units. There are existing certification requirements for Career Guidance and Placement Counselors which will help to define this counselor's role in the school. It is no longer appropriate for the Department of Education to write a job description for the position when the funding source and process has changed.

~~2. CAREER GUIDANCE AND PLACEMENT
COUNSELORS~~

~~(a) In the document Guidelines for the Career Guidance and Placement Counselor Program the State Board of Education approved the following job description for the Career Guidance and Placement Counselors:~~

~~Specific Tasks of the Career Guidance and Placement Counselors:~~

~~(1) provide coordination to assure students are~~

counseled about vocational and related academic educational programs that best meet their needs at both the regular high school and/or in the vocational school district;

(2) prepare and keep current a file of available jobs in the community and serve as liaison with the State Occupational Information Coordinating Committee (SOICC) and the Department of Labor;

(3) provide coordination with career and vocational counseling of middle school students;

(4) provide job placement counseling and assist students who desire full time placement upon graduation;

(5) assist with the coordination of student assessment, IEP development, and placement of all handicapped and disadvantaged students in mainstream vocational programs;

(6) assist the school district in providing information to all handicapped and disadvantaged students and their parents concerning the opportunities available in vocational education and the requirements for eligibility for enrollment in vocational education programs. (This should be accomplished no later than the beginning of the 9th grade.)

(7) complete a follow up study of graduates and dropouts of each year's graduating class;

(8) serve as liaison with the employment community and vocational advisory committees;

(9) assist in on-going pre-vocational/orientation programs to insure relevancy and coordination with the activities of the career guidance and placement counselor's function;

(10) assist students in exploring nontraditional, as well as traditional, vocational program areas and make career information available to all students for both traditional and nontraditional jobs; and

(11) coordinate the dissemination of information and the maintenance of records for the Targeted Jobs Tax Credit program for eligible student co-op participants.

(State Board Approved July 1987)

Regulatory Implementing Order School Transportation

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the School Transportation regulations by adding a section about school transportation aides to Section 19, as 19.10 School Transportation Aides. This amendment is necessary because references to school transportation aides, pages 11-24 to 11-25 Attendants and Aides, in the existing *Handbook of Personnel Administration for Delaware School Districts* and as repeated in the *Administrative Manual: Programs for*

Exceptional Children is being amended and recommended for inclusion in the School Transportation regulations.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 13, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend the School Transportation Regulations. The section of the regulations for Attendants and Aides on school bus aides from the *Handbook of Personnel Administration for Delaware School Districts*, pages 11-24 to 11-25, and as repeated in the *Administrative Manual: Programs for Exceptional Children* is being amended and since it is a transportation issue it should be placed in regulations on School Transportation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.*, Chapter 31, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.*, Section 122(e), the amended regulations shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Chapter 31 in open session at the said Board's regularly scheduled meeting on April 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of April, 2000.

DEPARTMENT OF EDUCATION
Valerie A Woodruff
Acting Secretary of Education

Approved this 20th day of April, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

**SECTION 19 OF THE SCHOOL TRANSPORTATION
REGULATIONS AS AMENDED**

19.0 Transportation for Students with Disabilities: Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or

institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/programs for children with disabilities.

**Regulatory Implementing Order
Pre-referral of Enrolled Students for Special Education
And/or Related Services
Policies, Programs and Services for Exceptional Children**

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the following two regulations: Pre-referral of Enrolled Students for Special Education and/or Related Services, pages A-9 to A-11, and Policies, Programs and Services for Exceptional Children, pages A-14 and A-15, from the *Handbook for K-12 Education*. The repeals are necessary because Pre-referral of

Enrolled Students for Special Education and/or Related Services is now covered in the regulations for Children with Disabilities, 2.0 Identification of Children with Disabilities and Policies, Programs and Services for Exceptional Children is simply a technical assistance Statement, not a regulation.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on January 18, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to repeal these regulations because one is in the amended regulations Children with Disabilities and the other is a technical assistance statement.

III. Decision to Repeal the Regulations

For the foregoing reasons, the Acting Secretary concludes that it is necessary to repeal the regulations. Therefore, pursuant to 14 *Del. C.*, Chapter 31, the regulations attached hereto as Exhibit B are hereby repealed.

IV. Text and Citation

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the *Handbook for K-12 Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Chapter 31, in open session at the said Board's regularly scheduled meeting on April 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of April, 2000.

DEPARTMENT OF EDUCATION
Valerie A Woodruff
Acting Secretary of Education

Approved this 20th day of April, 2000.

STATE BOARD OF EDUCATION
Dr. James L. Spartz, President
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Dr. Claibourne D. Smith

Pre-referral of Enrolled Students for Special Education and/or Related Services Policies and Programs for Exceptional Children

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the following two regulations: Pre-referral of Enrolled Students for Special Education and/or Related Services, pages A-9 to A-11, and Policies, Programs and Services for Exceptional Children, pages A-14 and A-15, from the *Handbook for K-12 Education*. The repeals are necessary for the following reasons: Pre-referral of Enrolled Students for Special Education and/or Related Services is now covered in the 900.5 Regulations for Children with Disabilities, 3.0 Procedures for Evaluation and Determination of Eligibility, and Policies, Programs and Services for Exceptional Children is simply a technical assistance statement, not a regulation.

FROM THE HANDBOOK FOR K-12 EDUCATION

~~I.E.1. PRE-REFERRAL/REFERRAL OF ENROLLED STUDENTS FOR SPECIAL EDUCATION AND/OR RELATED SERVICES~~

~~a. Definition~~

~~Pre-referral is a process which attempts to address student learning problems prior to referral for special education and related services.~~

~~Referral is the process whereby a written request is made for formal evaluation of a student who is being considered for special education. Each referral shall be accompanied by documentation of attempts at pre-referral intervention.~~

~~b. Procedure~~

~~For students manifesting difficulty in classroom learning and who may be in need of special education and related services, the building principal shall insure that pre-referral interventions are implemented and documented. Implementation may be done by the referral agent, usually the student's current teacher, with the assistance of other educational personnel as needed. If the student's learning problem is not alleviated by these interventions, a referral shall be made requesting an individual student evaluation in accordance with the District's Operational Plan for Exceptional Students.~~

~~A parent may initiate a referral for special education at any time. In this event, at the discretion of the parent, pre-referral activities described in this Handbook may be bypassed.~~

~~e. Documentation~~

~~Pre-referral intervention documentation shall contain each of the following components:~~

~~(1) results of records review which may include school health records, vision and hearing screenings, and attendance records;~~

~~(2) results of conference(s) with the parent(s) or guardian, administrative and teaching personnel, and other ancillary personnel if needed;~~

~~(3) supportive anecdotal records from the referral agent which identify the student's learning or behavioral problem(s);~~

~~(4) results of at least two observations conducted by educational personnel, in at least two different settings; and~~

~~(5) documentation of the results of a minimum of two interventions, techniques or educational alternatives which have been employed over a pre-determined period of time. Interventions may include a change of staff, program schedule, ancillary interventions, or other agency intervention.~~

~~d. Exemptions~~

~~Exempted from the pre-referral intervention procedures are:~~

~~(1) infants and pre-school age children;~~

~~(2) children whose behaviors endanger themselves or others;~~

~~(3) children who are suspected of being autistic, trainable or severely mentally handicapped, hearing impaired, visually impaired, or deaf/blind;~~

~~(4) children who are orthopedically handicapped; and~~

~~(5) children with trauma induced brain or spinal cord injury.~~

~~e. Other Considerations~~

~~Referrals for individual student evaluation which do not contain all required pre-referral documentation shall be returned to the referral agent with a request for the required information. A determination may be made by special services personnel that additional interventions are warranted. Upon agreement of the referral agent, the building principal and special services representative, such interventions may be implemented prior to referral for an individual student evaluation. These provisions, however, shall not be used by a school district to delay the provision of an individual student evaluation when all pre-referral data are complete and the referral agent maintains that the student is in need of such an evaluation.~~

FROM THE HANDBOOK FOR K-12 EDUCATION

~~I. POLICIES, PROGRAMS AND SERVICES FOR EXCEPTIONAL CHILDREN~~

~~a. Policies~~

~~The Delaware State Board of Education has~~

~~adopted policies for the provision of a free, appropriate public education to exceptional children which incorporate both State and Federal requirements. Each principal should become familiar with these policies as established in the Administrative Manual: Programs for Exceptional Children, as revised in June, 1996. Copies of this Manual have been distributed to principals throughout the State and updates are forwarded annually.~~

~~b. Programs and Services~~

~~Each district has prepared and implemented an operational plan which describes the programs and services offered to exceptional students residing in the district. The plan includes a design of the current delivery system, policies and procedures, eligibility criteria, funding, district performance objectives, and program evaluation results. Written for use by both parents and administrators alike, copies of the plan are available through district special services personnel.~~

**Regulatory Implementing Order
Children With Disabilities**

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulations on Children with Disabilities, currently located in the *Administrative Manual: Programs for Exceptional Children* ("AMPEC"), adopted July 1993, and as amended August 1993 and June 1996. The primary purpose of the proposed amendments is to assure compliance with the 1997 amendments to the *Individuals with Disabilities Education Act* ("IDEA") and its federal implementing regulations. To this end, the proposed regulations would adopt all of the applicable federal regulations as state regulations, while adding those regulations necessary to implement the federal requirements at the state level.

The proposed amendments also separate regulatory and statutory material, and isolate state from federal material. If adopted, the proposed regulations will be incorporated in a new technical assistance document entitled *Administrative Manual for Special Education Service* ("AMSES").

The Department solicited informal comments and input regarding the revisions to AMPEC in 1998 and 1999 from District Directors/Supervisors of Special Education and from the Governor's Advisory Council for Exceptional Children. Notice of the currently proposed amendments, including information on submitting formal comments, was published in the *News Journal* and the *Delaware State News* on January 18, 2000 in the form attached hereto as Exhibit A.

The proposed regulations also appeared in the *Delaware Register of Regulations* on January 1, 2000, at 3 DE Reg. 886-900 (January 1, 2000) and were distributed to the Chief

School Officers and the Governor's Advisory Council for Exceptional Children, Delaware School Boards Association, Delaware State Education Association and Delaware Association of School Administrators in December 1999. In addition, public hearings on the proposed regulations were held on February 1, 2000 and February 2, 2000 at two different locations in the State. Notice of these public hearings appeared in the *News Journal* and the *Delaware State News* on January 3, 2000 in the form attached hereto as Exhibit B.

Changes were made to the proposed published regulations as a result of written comments and those received at the public hearings. Other comments were considered, but did not result in changes. These items and actions are summarized in Exhibit C, attached hereto.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend *AMPEC* because of the 1997 federal reauthorization and revision of the *IDEA* and the 1999 federal adoption of the *IDEA* implementing regulations. The Department has also determined that the changes made to the published proposal, as summarized in Exhibit C, are not substantive and may be adopted without additional opportunity for public comment.

The Acting Secretary also finds that the proposed regulations (including the nonsubstantive changes made to them as a result of public comment) are consistent with the federal requirements and with Chapter 31 of Title 14 of the *Delaware Code*. The changes to the former regulations also help clarify the various statutory and regulatory requirements and impact for school districts and parents.

The Acting Secretary declines to adopt the following sections of proposed regulations for the reasons stated. These sections are being revised based on the comments received and will be republished for additional public comment.

Section 3.1, "Initial Evaluation." As proposed, this regulation would have required that the meeting to determine a child's eligibility for special education services occur within sixty school days of the receipt of parental consent for evaluation. The Department received comments that this time frame was too long and thus, would unnecessarily delay the provision of services. It also received comments that the proposed regulation did not provide enough administrative flexibility in evaluation and eligibility assessment. In light of the conflicting needs and comments, the Acting Secretary has determined that additional revisions to this proposed section are necessary.

Section 4.8, "Eligibility Criteria for Learning Disability." As proposed, this regulation would have modified the current criteria for eligibility for special education services based on a learning disability. The Department received comments suggesting the new criteria

are underinclusive and that they eliminate evaluator discretion in favor of strict reliance on discrepancy formulas. The Acting Secretary has determined that this proposed regulation should be revised in light of these comments.

Section 21.0, "General Supervision of Education for Students with Disabilities." This proposed regulation was substantially expanded by the Department after its initial publication. The expanded proposed regulation has been republished for comment and will be presented to the State Board for consideration at its May 18, 2000 meeting. The Acting Secretary has decided to act on the revised proposal as a whole in May.

Finally, the Acting Secretary notes that the Department has proposed and published additional regulations addressing Interagency and Special Programs, Children in Private Schools, State Agency Responsibilities, and Funding. It is anticipated that these regulations will be presented for consideration by the State Board at its May 18, 2000 meeting.

III. Decision to Amend the Current Regulations.

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend *AMPEC*. Therefore, pursuant to Chapter 31 of Title 14 of the *Delaware Code*, the regulations attached hereto as Exhibit D are adopted. Pursuant to the provisions of 14 *Del. C.*, Section 122(e), the amended regulations shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the adopted regulations shall be in the form attached hereto as Exhibit D and shall become part of the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Chapter 31, in open session at the said Board's regularly scheduled meeting on April 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of April, 2000.

DEPARTMENT OF EDUCATION
Valerie A Woodruff
Acting Secretary of Education

Approved this 20th day of April, 2000.
STATE BOARD OF EDUCATION

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Dr. Claibourne D. Smith

AS AMENDED

900.5 Children with Disabilities**1.0 Adoption and Incorporation of Federal Regulation**

1.1 The federal regulations adopted pursuant to the Individuals with Disabilities Act Amendments of 1997, effective May 11, 1999 and located at 34 CFR Parts 300 and 303, are adopted and incorporated as part of these Regulations.

1.2 These Regulations implement, complement and supplement the federal regulations and Chapter 31 of Title 14 of the *Delaware Code* (with the exception of Subchapter IV) and are designed and intended to insure compliance with applicable state and federal law. To the extent these Regulations conflict with the federal regulations, the federal regulations shall prevail.

1.3 These Regulations are arranged to correspond to the order of the federal regulations and shall be read in conjunction with the parallel provisions of the federal regulations, as illustrated by the *Administrative Manual for Special Education Services* available at the Department of Education.

2.0 Identification of Children with Disabilities

2.1 Child Find: Each school district and any other public agency responsible for the education of children with disabilities shall identify, locate and evaluate or reevaluate all children with disabilities residing within the confines of that district or other public agency, including children in private schools.

2.2 Health Screening: Health, hearing, vision, and orthopedic screening shall be conducted as specified in *The Regulations of the Department of Education*, 800.2, 800.3, 800.4, and 800.5.

2.3 Referral to Instructional Support Team: Referral to the school's instructional support team is a process whereby teachers enlist the help of the team to assist in the identification of potential instructional strategies or solutions for learning and behavior problems. The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility and possible need for special education services. Documentation of the process should be comprehensive (including baseline and outcome data) and include strategies such as: curriculum based assessment, systematic observation, functional assessment, current health information and analyses of instructional variables.

2.3.1 Each district or other public agency shall adopt and implement procedures which provide for the referral of children to an instructional support team. All such referrals shall be specified in writing.

2.3.2 Referrals for an individual child which do not contain all required documentation shall be returned to the school based instructional support team with a request for the required information. Returns may be triggered if documentation does not indicate evidence as described in the instructional support team process. These provisions shall not be used by a school district to delay the provision of an individual student evaluation when all pre-referral data are complete and the referral agent maintains that the student is in need of an individual student evaluation.

2.3.3 A parent may initiate a referral at any time for an initial evaluation to determine whether or not there is a need for special education services.

3.0 Procedures for Evaluation and Determination of Eligibility

3.1 ~~**3.1 Initial Evaluation: Informed written parental consent shall be obtained before conducting an initial evaluation and the meeting to determine eligibility shall occur within 60 school days of the receipt of consent for the initial evaluation unless additional time is mutually agreed upon.**~~ **[Reserved - Initial Evaluation]**

3.2 Evaluation Procedures**3.2.1 Qualified Evaluation Specialists**

3.2.1.1 A qualified evaluation specialist is a person who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.

3.2.2 Eligibility decisions may include (1) historical information and (2) evaluation data which are no more than two years old.

3.2.3 Each initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.

3.2.4 The Evaluation Report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.

3.3 Procedures for Determining Eligibility and Placement

3.3.1 Children who have an articulation impairment as their only presenting disability may not need a complete battery of assessments. However, a qualified speech-language pathologist shall evaluate each child who has a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments.

3.3.2 Written Report: The Evaluation Report shall document the IEP team's discussion of the

child's continued eligibility, including, where appropriate, the additional requirements for students with a learning disability.

3.3.3 Cognitive Ability: For cases in which continued eligibility for special education services is dependent upon level of cognitive ability or discrepancies between ability and achievement such as learning disability and mental disability, the IEP team shall ensure that the eligibility decision is based on reliable and valid individual assessment data. For children identified prior to age 7, a second individual evaluation shall occur after the child's 7th birthday, and be at least one year apart from the earlier evaluation. The results of these two evaluations shall lead to substantially similar conclusions about the child's level of cognitive ability or discrepancy between ability and achievement, if applicable.

3.3.4 Delaware Student Testing Program Participation: The IEP team shall determine the participation of a child with a disability in the Delaware Student Testing Program in conformity with the guidelines set forth in the Delaware Student Testing Program, *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*.

4.0 Eligibility for Services

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with Chapters 31 and 17 of Title 14 of the *Delaware Code* and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also

be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 *Delaware Code*, Ch. 17, Section 1703, when such eligibility and the nature of the disabling condition are determined by an IEP team.

Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:

4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:

4.3.1.1 Impairment in reciprocal social orientation/interaction;

4.3.1.2 Extreme resistance to change

and/or control;

4.3.1.3 Preoccupation with objects and/or inappropriate use of objects; and/or

4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.

4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team.

4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.

4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child

has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

4.6.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse.

4.6.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

4.6.3 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a

formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

~~4.8 Eligibility Criteria for Learning Disability: In order for an IEP Team to determine eligibility for special education services under the learning disability category, the following is required:~~

~~4.8.1 Written documentation of the formative intervention process used with the student. The documentation must include a:~~

~~4.8.1.1 clear statement of the student's presenting problem(s);~~

~~4.8.1.2 summary of diagnostic data collected and the sources of that data;~~

~~4.8.1.3 summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and~~

~~4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance; and~~

~~4.8.3 An IQ/achievement discrepancy in reading or writing or math using the regression tables;~~

~~4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.]~~

[Reserved - Eligibility Criteria for Learning Disability]

4.9 Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) - I.Q. 50-70, ≥ 5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, ≥ 5 points; Severe Mental Disability (SMD) - I.Q. below 35.

4.9.1 Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.

4.9.2 The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.

4.10 Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not

limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogryposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.

4.10.1 A qualified physician shall document that a child has a physical impairment in order to be considered for special education and related services under the above definition.

4.10.2 The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

4.10.2.3 Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment are required, and current medical prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;

4.10.3.2 Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist; and

4.10.3.3 Prior program or school records if available; and when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.

4.10.4 Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.11 Speech and/or Language Impairment Eligibility Criteria: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

4.11.1 The age of eligibility for children

identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

4.12 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

4.12.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

4.12.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.13 Visual Impairment Eligibility Criteria

4.13.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

4.13.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

4.13.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

4.13.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.13.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.14 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

4.14.1 A speech disability is defined as a communication disorder/delay involving articulation, voice quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

4.14.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

4.14.2.1 A speech and language

evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

4.14.2.1.1 articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test.

4.14.2.1.2 conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist.

4.14.2.1.3 oral motor involvement which may affect the development of normal articulation.

4.14.2.1.4 Speech Fluency, or

4.14.2.1.5 Voice Quality

4.14.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

4.14.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

5.0 Individualized Education Program (IEP): An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

5.2 IEP of Transferring Students with Disabilities

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with 29 *Delaware Code*, Chapter 5.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent

and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action. See 12.0 Disciplinary Procedures.

5.4 Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The IEP shall designate whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.

5.4.2 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.

5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.

5.6.1 Degree of Impairment: The team

should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature and/or severity of the child's disability.

5.6.2 Regression/recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on students who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.

5.6.3 Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.

5.6.4 Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

5.6.5 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.

5.6.6 Extended school year services are to be based on needs and goals/objectives found within the child's IEP of the school year, though activities may be different.

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

5.6.8 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled students for the sole purpose of satisfying the LRE requirements for students receiving extended school year services.

5.6.9 Transportation shall be provided to students except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a

transportation option if the parent voluntarily transports the student.

5.6.10 Written notice shall be provided to parents advising them that extended school year services will be discussed at the IEP meeting. The IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

5.6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

6.0 Least Restrictive Environment is operationalized in terms of the degree of interaction between children with and without disabilities. The decision about placement within the least restrictive environment is made following the writing of the IEP and is directly related to the child's needs and identified services documented in the IEP. Settings in which services can be provided include:

6.1 Regulation Education Class: Children with disabilities receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in:

6.1.1 Regular class with special education/related services provided within regular classes,

6.1.2 Regular class with instruction within the regular class and with special education/related services provided outside regular classes, or

6.1.3 Regular class with special education services provided in resource rooms.

6.2 Resource Class: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children and youth placed in:

6.2.1 Resource rooms with special education/related services provided within the resource room, or

6.2.2 Resource rooms with part-time instruction in a regular class.

6.3 Self-Contained Class: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include children who received education programs in public or private separate day or residential facilities. This may include children and youth placed in:

6.3.1 Self-contained special classrooms with part-time instruction in a regular class.

6.3.2 Self-contained special classrooms with full-time special education instruction on a regular school campus.

6.4 Public Separate Day School: Children with disabilities receive special education and related services for greater than 50 percent of the school day in public separate facilities. This may include children and youth placed in:

6.4.1 Public day schools for children with disabilities, or

6.4.2 Public day schools for children with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.

6.5 Private Separate Day School: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities. This may include children and youth placed in private day schools for students with disabilities.

6.6 Public Residential Placement: Children with disabilities receiving special education and related services for greater than 50 percent of the school day in public residential facilities. This may include children and youth placed in

6.6.1 Public residential schools for children with disabilities, or

6.6.2 Public residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.7 Private Residential Facilities: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities. This may include children and youth placed in:

6.7.1 Private residential schools for children with disabilities, or

6.7.2 Private residential schools for students with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.8 Homebound/Hospital Placement: Supportive Instruction (Homebound Instruction) is supportive instruction in an alternative program provided at home, hospital or related site for children suffering from an illness or injury. For other disabled children it may be the level of service which assures a free, appropriate public education.

6.8.1 Where the child with a disability is a danger to himself or to herself, or is so disruptive that his or her behavior substantially interferes with the learning of other students in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.

6.8.2 Services provided under these

conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with requirements for the provision of a free, appropriate public education.

6.8.3 In instances of parental objection to such home instruction, due process provisions apply.

6.8.4 To be eligible for supportive instruction and related services, the following criteria shall be met:

6.8.4.1 The child shall be identified as disabled and in need of special education and/or related services and enrolled in the school district or other public educational program; and

6.8.4.2 If absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; or

6.8.4.3 If absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or psychiatrist, and that such placement is both necessary and temporary; or if for transitional in-school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.

6.8.5 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

6.8.6 Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team that the child needs a transitional program to facilitate his or her return to the school program.

6.9 Least Restrictive Environment Placement Decisions: The school district shall ensure that when a child with a disability is placed, a chronologically age-appropriate placement is provided.

6.9.1 An educational placement deemed appropriate by a child's IEP team shall not be denied merely because of the category of the child's disability, configuration of the existing service/support delivery system, availability of educational or related services, availability of space, or curriculum content or methods of curriculum delivery.

6.9.2 A change in placement requiring an IEP team meeting occurs when the district proposes to initiate or change the placement of the child. This includes a change in:

6.9.2.1 The amount of time of regular, special education and/or related services; or

6.9.2.2 The settings as identified in 6.1 –

6.8 above.

6.9.3 A change of placement does not include a change of teachers when the same services are being provided, a change in the schedule of service delivery, or routine movement within a feeder pattern, i.e., grade level changes.

7.0 Vocational Education: When appropriate to individual needs of the children, as determined by the IEP team, each school district or other public agency responsible for the education of a child with a disability shall provide vocational education programs for such children in the Least Restrictive Environment.

7.1 Children with disabilities will be provided with equal access to recruitment, enrollment and placement activities.

7.2 Children with disabilities will be provided with equal access to the full range of vocational programs available to all students including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services.

7.3 In addition to the vocational program, each school district or other public agency shall ensure the following supplementary services are provided to children with disabilities:

7.3.1 Modification of curriculum, equipment and facilities as needed;

7.3.2 Supportive personnel;

7.3.3 Instructional aids and devices;

7.3.4 Guidance, counseling and career development staff who are associated with the provision of such special services;

7.3.5 Counseling services designed to facilitate the transition from school to post-school employment and career opportunities. Carl D. Perkins Vocational & Technical Education Act of 1998.

7.3.6 Regular vocational programs with supportive services as identified by the IEP team; and

7.3.7 Special education vocational programs.

7.4 Each school district or other public agency must provide assurances that they will assist in fulfilling the transitional service requirement as defined in Individuals with Disabilities Education Act (IDEA).

7.5 Each school district or other public agency shall ensure the provision of an appropriate vocational education, including access to Career Pathways, as determined by the IEP team through the availability of a continuum of vocational education placements. The continuum of placements includes, but is not limited to:

7.5.1 Regular vocational programs with no supportive services;

7.5.2 Regular vocational programs with supportive services as identified by the IEP team;

7.5.3 Special education vocational programs;
7.5.4 Self-contained vocational programs;
and
7.5.5 Community based job training programs.

8.0 Facilities, Equipment and Materials: All facilities which house programs for children with disabilities must meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier-free regulations.

8.1 All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.

9.0 Length of School Day: The minimum length of the instructional school day for a child with a disability in Kindergarten through grade twelve shall be the same as it is for non-disabled children in those grades. The minimum length of the school day for disabled pre-Kindergarten children shall approximate that of non-disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances where a child is medically unable to endure the required length of school day, and then only by IEP committee decision after disclosure of the above standards to the child's parents/guardian.

10.0 Compulsory Attendance: Compulsory attendance will be in accordance with 14 Del. C., Section 2703 and 2706, and shall apply to students with disabilities between the ages of 5 and 16. Attendance of children with disabilities under or over the compulsory school attendance age range, 14 Del. C., Section 2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations by the Department of Education.

11.0 Transportation: Transportation of all children to and from school is provided under 14 Del. C., Ch. 29. When special transportation needs are indicated in a child's IEP, transportation becomes a "related service."

11.1 Travel to and from school and between schools, including required specialized equipment, shall be at State expense when such travel and/or specialized equipment requirements are specified on the child's IEP; and it is necessary for the implementation of the child's IEP.

11.2 Travel arrangements are made in consultation with the local transportation representative when unusual requirements are indicated.

11.3 Transportation provided to accommodate a related service shall be at local school district or other public

agency expense. Transportation incidental to the disabled child's educational program shall not be at State expense, including, but not limited to work study arrangements; cooperative work arrangements; and extracurricular activities.

12.0 Discipline Procedures

12.1 Documentation, including the reasons for the action, must be made of any removal for more than 10 days. In addition to the removals identified in CFR Section 300.519, the following removals shall constitute a change in placement:

12.1.1 In-school removals for more than 10 days. If it deprives a child from (1) meeting the goals set out in the IEP, (2) progressing in the general curriculum - though in another setting, and (3) receiving those services and modifications described in the IEP; and

12.1.2 Removals from transportation, if it results in the child's absence from school for more than 10 days.

12.2 Expedited Due Process Hearings

12.2.1 An expedited due process hearing shall be conducted by a single, impartial hearing officer appointed by the Department of Education from the attorney members of its Registry of Impartial Hearing Officers, and shall result in a decision within 45 days of the receipt of the request for a hearing.

12.2.2 Procedural rules for an expedited due process hearing shall differ from those for a regular due process hearing as follows:

12.2.2.1 Any party to a hearing has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing.

12.2.2.2 At least two (2) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

12.2.2.1 The hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

12.3 Corporal Punishment: Prior to any proposed administration of corporal punishment to a child with a disability, a determination by the child's IEP team shall be made as to whether or not the misconduct prompting the proposed corporal punishment is related to, or a manifestation of, the child's disability.

12.3.1 The misconduct is related to, or a manifestation of, the child's disability, any discipline shall be in accordance with the child's IEP.

12.3.2 The misconduct is not related to, or a manifestation of the child's disability, corporal punishment may be administered in accordance with the same State and

other provisions as applied to non-disabled children in the school district or other public agency.

12.4 Written Notice: The school district or other public agency shall ensure that the parents/guardian of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school year.

13.0 Educational Surrogate Parent: An "Educational Surrogate Parent", hereinafter referred to as "Surrogate Parent", is defined as an individual appointed to represent a child who receives, or may be in need of, special education in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

13.1 A surrogate parent shall be appointed by the Department of Education to represent a child in all matters pertaining to the identification, evaluation, educational placement and the provision of a free appropriate public education when any one of the following situations exist:

13.1.1 A parent cannot be identified;

13.1.2 After reasonable efforts, the whereabouts of the parent cannot be discovered. Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last known address;

13.1.3 Parental rights have been terminated, and legal responsibility has not been granted by a court of law to an individual, not to include a state agency, and the child has not been adopted; or

13.1.4 The child's parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the Department of Education.

13.2 A surrogate parent is not required for a child who receives, or may be in need of, special education when the child is living in the home of a relative who agrees to act in the place of the parent.

13.3 An otherwise eligible child between the ages of 18 and 21 shall continue to be entitled to the services of a surrogate parent. Such child, however, who has not been declared incompetent by a court of law retains the right to make his/her own educational decisions. This right to make decisions is extended to include:

13.3.1 The right of access to a surrogate parent who shall act as an advisor to the student;

13.3.2 The right to refuse the appointment of a surrogate parent;

13.3.3 The right to participate in the selection of a surrogate parent; and

13.3.4 The right to terminate the services of a duly appointed surrogate parent.

13.3.5 To exercise any of the above rights, the child shall, upon notification of eligibility for services of a surrogate parent, declare his/her intentions in writing.

13.4 Nomination and Candidacy of Surrogate Parent: The Department of Education shall be notified in writing of the names of potential surrogate parents by anyone having knowledge of the person's willingness to serve.

13.5 Screening of Potential Surrogate Parents: Each potential surrogate parent shall be screened by the Department of Education, in consultation with school districts, to determine that he/she meets candidacy requirements.

13.6 To serve as a surrogate parent, each candidate shall:

13.6.1 Be at least 18 years of age;

13.6.2 Be a legal resident of the United States;

13.6.3 Be competent to represent the child;

13.6.4 Not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the child (a person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent). Foster parents are not considered employees for purposes of this requirement.

13.6.5 Have no interest that conflicts with the interest of the child he/she may represent (such determination is made on a case-by-case basis). In general, a person would have a conflict of interest if she/he were in a position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free appropriate public education for the child.

13.6.6 Receive instruction about State and federal laws and regulations, due process procedures, disability conditions and the availability of programs and services for students with disabilities, as provided by the Department of Education; and

13.6.7 Be able to converse in the primary communication mode used by the child, whenever possible.

13.7 Training for Surrogate Parents: Initial training for surrogate parents shall be provided by the Department of Education. Such training sessions shall be conducted at least annually.

13.7.1 The Department of Education shall issue a Certificate of Training to qualified persons who complete the required surrogate parent training.

13.7.2 The Department of Education shall notify districts and the Department of Services for Children, Youth and Their Families of persons who are certified as surrogate parents.

13.7.3 Follow-up training shall be provided

by the Department of Education.

13.8 Appointment of Surrogate Parents: Each district shall be responsible for having procedures to locate and refer eligible children. Any person or entity, however, may identify a child believed to require a surrogate parent. Referral shall be made on the designated form to the Department of Education with a copy sent to the supervisor of special education in the district in which the child will receive or is receiving special education.

13.8.1 The Department of Education shall determine the child's eligibility for a surrogate parent.

13.8.2 The Department of Education staff person responsible for surrogate parents or his/her designee shall recommend to the Department of Education a certified surrogate parent to represent the student after consultation, as appropriate, with the local school district regarding the match of the surrogate parent to a particular child.

13.8.3 The Department of Education shall notify, in writing, the district and/or referring agency/person of the appointment.

13.8.4 A person may be appointed to serve as a surrogate parent for more than one child to the extent that such appointment is consistent with effective representation of the children. In no event shall one person be appointed as a surrogate parent for more than four children.

13.9 Responsibilities of Surrogate Parent: Each person assigned as a surrogate parent shall represent the child in all education decision-making processes concerning that child by:

13.9.1 Becoming thoroughly acquainted with the child's educational history and other information contained in school records and reports relating to the child's educational needs;

13.9.2 Granting or denying permission for initial evaluation or placement, and safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child;

13.9.3 Participating in the development of an IEP for the child;

13.9.4 Reviewing and evaluating special education programs pertaining to the child and other such programs as may be available;

13.9.5 Initiating mediation, complaint, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the child, and seeking qualified legal assistance when such assistance is in the best interest of the child; and

13.9.6 Taking part in training provided to become familiar with the State and federal laws and regulations, due process procedures regarding the education of children with disabilities, information about disabilities,

and the availability of programs and services for such children.

13.10 The term of service of the surrogate parent shall be the length of time which the surrogate parent is willing to serve; or the length of time the child requires a surrogate parent; or so long as the qualifications to serve and the performance of duties as a surrogate parent are met.

13.11 Termination of Services of a Surrogate Parent: If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify the Department of Education, in writing, at least thirty days prior to termination of such services.

13.11.1 The Department of Education shall determine whether each surrogate parent's appointment shall continue or be terminated. Termination shall be justified based only on material failure of the surrogate parent to discharge his/her duties or maintain confidentiality. The surrogate parent shall be given notice of a decision to terminate and shall have an opportunity to respond.

13.12 Compensation for Services as a Surrogate Parent: Surrogate parents shall be reimbursed by the Department of Education for all reasonable and necessary expenses incurred in performance of duties. Reasonable and necessary expenses include, but are not limited to:

13.12.1 Mileage for attendance at meetings concerning the child being represented; and

13.12.2 Long-distance telephone calls to the school in which the child is being served; and

13.12.3 Photocopying of the child's records.

13.13 Liability of the Surrogate Parent: A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.

14.0 Procedural Safeguards

14.1 The district may require advance notice when parents or guardians wish to visit a proposed educational program.

14.2 Written notice must be given to parents of children with disabilities no less than ten (10) business days unless waived by agreement of both parties. In cases involving a change of placement for disciplinary removal, written notice must be provided no less than three (3) business days.

14.3 Documentation of attempts to notify the parents/guardian, by the district or any other public agency, shall be maintained.

14.4 Mediation of disputes between the school and the parents/guardian as to the child's education program shall be offered at the discretion of the Department of Education.

14.4.1 The process shall use an impartial, trained individual to assist the parties in working out acceptable solutions in an informed, non-adversarial context.

14.4.2 Parents may be accompanied and

advised by individuals of their choice.

14.4.3 The district shall ensure the attendance of a representative with authority to make decisions and commit resources to agreed upon services.

14.4.4 If an agreement is reached as part of the mediation process, it is considered an educational record, which may be released at the parent's discretion.

15.0 Due Process Procedures

15.1 Initiation of Hearing Procedures: A request for a Due Process Hearing shall be made in writing to the Secretary of Education.

15.2 Legal Services: The Secretary of Education's response to the request for a hearing shall include a statement regarding free or low cost legal services.

15.3 The attorney member shall act as chairperson for the Due Process Hearing Panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must have the concurrence of two members of the Due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decision. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.

15.4 Registry of Impartial Hearing Officers: The Department of Education shall keep a list of persons who may serve as hearing officers.

15.5 The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel.

15.6 Any party to a hearing has the right to prohibit the introduction at the hearing of testimony of any witness whose identity has not been disclosed to the parties at least 5 business days before the hearing.

15.7 The parents/guardian shall have the right to receive a written decision which includes the following parts: statement of issues; summary of the proceedings; summary of evidence; findings of facts; conclusions of law; and summary of the issues on which the parties have prevailed.

15.8 The impartial Due Process Hearing Panel shall reach a final decision, and the chairperson shall record the vote of each panelist. The chairperson shall forward a copy of its final decision to the parties, and to the Department of Education.

15.9 The Department of Education shall forward the decision, with all personally identifiable information deleted, to the chairperson of the Governor's Advisory Council for Exceptional Citizens, and make those findings and decisions available to the public by placing legal notice annually in newspapers of sufficient circulation in each of the three Delaware counties, that this information may be obtained through the Department of Education.

15.10 The chairperson of the Panel shall establish a timeline for the hearing process. In granting specific extensions, the chairperson shall ensure that the

petitioner's right to redress is in no way diminished or unnecessarily delayed.

15.11 Non-Exclusivity of Remedies: The remedies identified in this section should not be viewed as exclusive. In certain contexts, other remedies created by law or local district practice may be available.

15.12 Non-Compliance: When the finding indicates non-compliance, the following procedures shall be followed:

15.12.1 The agency shall be presented with the findings and a time frame for corrective action specified by the Department of Education.

15.12.1.1 If the agency agrees with the findings and completes a specified corrective action within a time frame specified by the Department of Education, follow-up activities by the Department of Education will be conducted to verify full compliance.

15.12.1.2 A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Secretary of Education and the complainant.

15.13 Compliance: When the findings reveal full compliance, no further action shall be taken.

15.14 Any complainant under this section shall file the complaint in writing with the Department of Education, P. O. Box 1402, Dover, DE 19903, and shall include in the complaint the following:

15.14.1 The name of the agency against which the complaint is filed;

15.14.2 A statement that the agency has violated a requirement of the Individuals with Disabilities Education Act (IDEA) and/or the provisions of this Manual;

15.14.3 The facts on which the statement is based;

15.14.4 The time frame in which the incident(s) occurred;

15.14.5 A description of the attempts made to resolve the issue(s) prior to filing this action; and

15.14.6 Name, address, phone number(s) of individual(s) filing the complaint and the legal representative, if any, or of individuals representing a public agency or private organization filing a complaint.

16.0 Confidentiality of Student Records

16.1 Parental Refusal to Release Records: In the event that a parent refuses to provide consent before personally identifiable information is disclosed to anyone other than officials of the district or State Department of Education, the parent shall be advised in writing that the district has either:

16.1.1 Recognized that refusal and will not forward the records; or the district will exercise its option to request an impartial due process hearing in order to effect the release of records. In the event that the district elects to seek a due process hearing, the district shall send the parent a

copy of the *Special Education: Parents' Guide to Rights and Services* and a copy of parents' due process rights as delineated in this Manual.

17.0 High School Graduation

17.1 Continuing their Education: Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at district expense, until their 21st birthday.

17.2 Graduation Process: Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to his/her disability, educational placement or the type of document conferred.

18.0 Reserved - Interagency/Special Programs

19.0 Reserved – Special Programs for Children with a Visual Impairment

20.0 Reserved – Special Programs for Children who are Deaf and Hard of Hearing

21.0 ~~General Supervision of Education for Students with Disabilities: The State Educational Agency (SEA) shall ensure that each educational program for students with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for students with disabilities in the State educational agency; and meets education standards of the State educational agency.~~

~~21.1 Documentation of SEA activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:~~

~~21.1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination, and Finance/Administration.~~

~~21.2 The SEA will ensure, through its Comprehensive Compliance Monitoring System, that each public agency develops and implements an IEP for each of its children with disabilities.~~

~~21.3 The Department of Education shall distribute these regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.~~
~~[Reserved – Special Programs for Children who are Deafblind]~~

22.0 Reserved – Special Programs for Children with

Autism

23.0 Reserved – Students in Need of Unique Educational Alternatives

24.0 Reserved – General Supervision of Education for Children with Disabilities

25.0 Advisory Council for Exceptional Citizens. The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by PL 94-142 (20 U.S.C. Section 1400 et seq.). (14 Del. C. 195, Section 3108; 51 Del. Laws, C. 287, Section 3; 61 Del. Laws, 190, Section 7; 71 Del. Laws, c. 180, Section 147.)

25.1 An annual report prepared by the Governor's Advisory Council for Exceptional Citizens shall be made available to the public in a manner consistent with other public reporting requirements.

25.1.1 The annual report shall be reviewed by the Department of Education and the Department's response shall be sent to the Governor's Advisory Council.

25.2 All Advisory Panel meetings and agenda items shall be publicly announced prior to the meeting, and meetings must be open to the public.

25.3 The State shall reimburse the Panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use Part B funds for this purpose.

26.0 Reserved – Funding Issues for Children with Disabilities

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section
512 (31 Del.C. 512)

In the Matter Of: |

Revision of the Regulations |
Of the Medicaid/medical |
Assistance Program |

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update its Division of Social Services Manual related to eligibility policies for Qualified Disabled and Working Individuals.

The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 29, 2000, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact:

The Department finds that the proposed changes as set forth in the February 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective May 10, 2000.

March 30, 2000
Gregg C. Sylvester, M.D.
Secretary

17700 Qualified Disabled and Working Individual

Effective July 1, 1990, Section 6408 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 mandates coverage of certain Medicare beneficiaries who are still disabled but lost premium-free Part A Medicare coverage because they returned to work. Medicaid will pay the Part A premium for Qualified Disabled and Working Individuals (QDWIs) who meet the income ~~and resource~~ requirements.

A QDWI is an individual:

- who is entitled to enroll in Medicare Part A under §1818A of the Social Security Act;
- whose income does not exceed 200% of the Federal Poverty Level;
- ~~whose resources do not exceed twice the SSI resource limit;~~ and
- who is not otherwise eligible for Medicaid.

17700.3 Financial Eligibility

The income ~~and resource~~ methodologies of the SSI program will be used to determine eligibility for this program. See the QMB section for definitions of income ~~and resource~~. (DSSM 17300)

~~17700.3.2 Resources~~

~~The resource limit is twice the SSI limit. Follow the resource guidelines outlined in the Qualified Medicare Beneficiary program.~~

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. 512)

In the Matter Of:	
Revision of the Regulations	
Of the Medicaid/medical	
Assistance Program	

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to the General Policy Provider Manual. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 29, 2000, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact:

The Department finds that the proposed changes as set forth in the February 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective May 10, 2000.

March 30, 2000
Date of Signature

Gregg C. Sylvester, M.D.
Secretary

Guaranteed Eligibility

Section 1902(e)(2) of the Social Security Act, as

amended by the Balanced Budget Act of 1997, permits up to six months of guaranteed eligibility for individuals if they are enrolled in a managed care organization.

A six-month period of guaranteed eligibility is defined as a six-month period of continuous enrollment in a managed care organization under the Diamond State Health Plan (DSHP). The following individuals may be found eligible for a six-month period of guaranteed eligibility:

- A first-time Medicaid recipient
- An individual who becomes eligible for Medicaid again following a period of at least one month of ineligibility for Medicaid.

The guaranteed eligibility period begins with the first of the month in which the individual enrolls in the DSHP and continues for six consecutive months. The individual who is enrolled in DSHP retains eligibility for Medicaid services, even if the individual otherwise loses Medicaid eligibility.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section
2107 (7 Del.C. 2107)

**Re: Amendments to Shellfish Regulations Nos. S-51, S-54, S-55 and S-57.
Order No. 2000-F-0019
Order**

Summary of the Evidence and Information

Pursuant to due notice 3:9 Del. R. 1176-1178, the Department of Natural Resources and Environmental Control proposed to amend shellfish regulations pertaining to horseshoe crabs to reduce the harvest in 2000 to 361,801 horseshoe crabs as required in Addendum No. 1 to the Fishery Management Plan for Horseshoe Crab, approved by the Atlantic States Marine Fisheries Commission on February 9, 2000. The Department proposed to implement a daily harvest and require written permission from private landowners for anyone collecting horseshoe crabs on private lands. The Department also proposed to ban the landing of horseshoe crabs in Delaware that were taken from the Exclusive Economic Zone.

A public workshop was conducted by the Department on March 7, 2000. It was proposed by watermen at that workshop that commercial eel pot fishermen should be restricted in collecting horseshoe crabs to only those who

reported landing eels in 1999. It was also proposed by watermen that the Department implement a quota based management system whereby the quota of 361,801 horseshoe crabs would be administered by monitoring the weekly harvest of horseshoe crabs and closing the fishery for horseshoe crabs when the quota of 361,801 is reached. Daily restrictions on the harvest of horseshoe crabs of less than 300 cubic feet or 1500 per day was discouraged by watermen. Watermen and conservationists agreed that written permission to collect horseshoe crabs from private lands was warranted. No one objected to limiting the landing of horseshoe crabs taken in the Exclusive Economic Zone to the five horseshoe crab dredge permittees.

A public hearing was conducted by the Department on March 20, 2000 on options resulting from the public workshop to reduce the harvest of horseshoe crabs to 361,801 in 2000. The options presented included to do nothing; to implement a 361 horseshoe crab daily take limit for all persons harvesting horseshoe crabs; to implement a quota based management system with weekly reporting; to restrict commercial eel fishermen authorized to collect horseshoe crabs to only those who reported landing eels in 1999; to change the possession limit of 300 cubic feet of horseshoe crabs to a daily take and possession limit; to not allow the landing of horseshoe crabs taken from the Exclusive Economic Zone unless one has a valid horseshoe crab dredge permit and to require written permission to collect horseshoe crabs from private property.

Findings of Fact

- Delaware is required to comply with Fishery Management Plan adopted by the Atlantic States Marine Fisheries Commission under P.L. 103-206
- The Atlantic States Marine Fisheries Commission adopted Addendum No. 1 to the Fishery Management Plan for Horseshoe Crab on February 9, 2000.
- Addendum No. 1 to the Fishery Management Plan for Horseshoe Crab requires Delaware to harvest no more than 361,801 horseshoe crabs in calendar year 2000.
- Addendum No. 1 requires that each Atlantic Coastal state document its landings and enforce their harvest caps.
- The Secretary of the U.S. Department of Commerce is authorized to close the horseshoe crab fishery in Delaware if Delaware does not comply with the requirements of Addendum No. 1.
- The DNREC is not authorized to limit the issuance of commercial eel pot licenses.
- Under current DNREC regulations, commercial eel pot fishermen are authorized to collect horseshoe crabs, without a horseshoe crab collecting permit, for their own use as bait in their eel pots in this

State. An alternate to an eel pot licensee also is authorized to collect horseshoe crabs for use in the eelers pots. The commercial eel fisherman and his alternate are not authorized to sell horseshoe crabs.

- The current possession limit of 300 cubic feet of horseshoe crabs equates to approximately 1500 horseshoe crabs, both male and female.

Conclusions

I have reached the following conclusions relative to limiting the harvest of horseshoe crabs to 361,801 in 2000.

- A yearly quota based fishery for horseshoe crabs, limited to 361,801 horseshoe crabs in 2000, is acceptable to most watermen and environmental interest groups provided monitoring of the harvest is weekly and verifiable.
- The rate of harvest for horseshoe crabs in 1998 and 1999 indicates the 361,801 horseshoe crabs should be harvested by the second or third week in June.
- Weekly reports of harvested horseshoe crabs should be required via telephone to a dedicated telephone number monitored by the Department of Fish and Wildlife specifically for reporting the harvest of horseshoe crabs.
- The current possession limit of 300 cubic feet of horseshoe crabs should be expanded to also be a daily take limit to prevent a rush to harvest horseshoe crabs and better insure the availability of horseshoe crabs throughout the year for the local bait needs of eel and conch pot fishermen.
- Delaware horseshoe crab harvesters do not favor a daily limit of horseshoe crabs less than the current possession limit of 300 cubic feet. Anything less would concentrate the harvest on female horseshoe crabs and not allow a profitable dredge fishery.
- Commercial eel pot fishermen should not be restricted in harvesting horseshoe crabs for their own use as bait in their commercial eel pots in the State. The current law allows for an open commercial eel fishery and all privileges should apply to all commercial eelers. Otherwise, it should be a legislative matter.
- Any horseshoe crabs harvested by dredge in the Exclusive Economic Zone and landed in Delaware should be allowed for only those persons holding a horseshoe crab dredge permit.
- Collecting horseshoe crabs on lands not owned by the State or federal government is a privilege offered by the owner of said lands. To avoid conflicts among horseshoe crab collectors, written permission to collect horseshoe crabs should be obtained from the owner of the land.

Recommendations

- The DNREC should implement an annual quota management system for 361,801 horseshoe crabs in 2000.
- The DNREC should require weekly reporting of the harvest of horseshoe crabs by all commercial horseshoe crab collectors, commercial eel fishermen and horseshoe crab dredgers. These reports should be made by calling a dedicated line, maintained by the Division of Fish and Wildlife, to report horseshoe crab landings on or before midnight of the Monday following the week in question.
- All commercial eel fishermen should be authorized to collect horseshoe crabs by hand.
- The current possession limit of 300 cubic feet of horseshoe crabs should be expanded to also be the daily take limit of horseshoe crabs to prolong the season for collecting horseshoe crabs at least through June.
- Horseshoe crabs harvested in the Exclusive Economic Zone should not be landed in Delaware unless a person has a commercial horseshoe crab dredge permit.
- Anyone collecting horseshoe crabs on land not owned by the State or federal government should be required to have written permission on his person from the owner of the land upon which horseshoe crabs are being collected. Written permission should include the name and address of the person collecting horseshoe crabs and signed and dated by the owner of the land.

Order

It is hereby ordered, this 7th day of April, 2000 that amendments to shellfish regulation Nos. S-51, S-54, S-55 and S-57, copies of which are attached hereto, are adopted pursuant to §2701, 7 Del. C. and are supported by the Department's findings on the evidence and testimony received. This Order shall be effective on May 10, 2000.

Nicholas A. DiPasquale, Secretary
Department of Natural Resources And
Environmental Control

Be it adopted by the Department of Natural Resources and Environmental Control the following amendments to Shellfish Regulation Nos. S-51, S-54, S-55 and S-57.

Section 1. Amend Shellfish Regulation No. S-51,
SEASONS AND AREA CLOSED TO TAKING

HORSESHOE CRABS by adding new subsections (c) and (d) to read as follows:

"(c) It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his/her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

(d) It shall be unlawful for any person to collect or dredge or to attempt to collect or dredge horseshoe crabs at anytime during a calendar year after the date the Department determines the annual quota of horseshoe crabs, approved for Delaware by the Atlantic States Marine Fisheries Commission, is landed."

Section 2. Amend Shellfish Regulation No. S-54, POSSESSION LIMIT OF HORSESHOE CRABS, EXCEPTIONS, in subsection (b) by striking the word "filed" as it appears in "...fishing licensee has filed all required reports..." and substituting the words "submitted" in lieu thereof.

Further amend shellfish regulation No. 54 in subsection (b) by striking the word "month's" as it appears in "...alternate's previous month's harvest..." and substitute the word "week's" in lieu thereof.

Further amend Shellfish Regulation No. 54 by adding a new subsection (h) to read as follows

"(h) It shall be unlawful for any person to collect or to attempt to collect more than 300 cubic feet of horseshoe crabs during any 24 hour period beginning at 12:01AM and continuing through midnight next ensuing."

Section 3. Amend Shellfish Regulation No. S-55 by adding a new subsection (d) to read as follows:

"(d) It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crabs dredge permit."

Section 4. Amend Shellfish Regulation No. S-57, HORSESHOE CRAB REPORTING REQUIREMENTS, by striking subsections (a) and (b) in their entirety and substitute in lieu thereof the following:

"(a) It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a

commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a weekly basis. Said weekly reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a weekly report on his/her harvest of horseshoe crabs to the Department shall submit said report on or before 4:30PM on the Monday following the week covered by said report. If said Monday is a legal State holiday, said report shall be submitted on or before 4:30PM on Tuesday, next ensuing. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and locations horseshoe crabs were harvested, the number and sex of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

"(b) Any person who fails to submit a weekly report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department."

Section 5. These amendments to Shellfish Regulations Nos. S-51, S-54, S-55 and S-57 shall become effective on May 10, 2000.

Final Amendments to Shellfish Regulations on Horseshoe Crabs

S-51 Seasons And Area Closed To Taking Horseshoe Crabs

(a) It shall be unlawful for any person to collect or dredge or attempt to collect or dredge horseshoe crabs from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30, next ensuing, except that persons with valid horseshoe crab collecting permits and eel licensees and their alternates may collect horseshoe crabs on Tuesdays and Thursdays from state owned lands to the east of state road No. 89 (Port

Mahon Road.)

(b) It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any lands not owned by the state or federal government during the period beginning at 12:01 a.m. on May 1 and continuing through midnight, June 30, next ensuing, except that persons with valid horseshoe crab collecting permits and eel licensees and their alternates may collect horseshoe crabs on Mondays, Wednesdays and Fridays.

~~(c) It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from [any] land [s] not owned by the State or federal government unless said person has [in] [on] his or her [possession] [person] written permission [to collect horseshoe crabs signed by the lawful owner of said lands.]~~, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.]

[(d) It shall be unlawful for any person to collect or dredge or to attempt to collect or dredge horseshoe crabs at any time during a calendar year after the date the Department determines the annual quota of horseshoe crabs, approved for Delaware by the Atlantic States Marine Fisheries Commission, is landed.]

S-54 Possession Limit Of Horseshoe Crabs, Exceptions

(a) Unless otherwise authorized, it shall be unlawful for any person to possess more than six (6) horseshoe crabs, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

(b) Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has ~~[filed]~~ **[submitted]** all required reports of his/her and his/her alternate's previous ~~[month's]~~ **[week's]** harvest of horseshoe crabs with the Department in accordance with S-57. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.

(c) It shall be unlawful for any person with a valid commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as the alternate.

(d) Any person with both a valid commercial eel fishing license and a valid commercial horseshoe crab collecting permit shall be considered as a commercial horseshoe crab collecting permittee for purposes of enforcing the provisions of chapter 27, 7 Del. C. and/or shellfish regulations pertaining to horseshoe crabs.

(e) It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

(f) It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid commercial horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

~~(g) It shall be unlawful for any person to possess more than 300 cubic feet of horseshoe crabs except in a stationary cold storage or freezer facility.~~

[(g) It shall be unlawful for any person to possess more than 300 cubic feet of horseshoe crabs except in a stationary cold storage or freezer facility.]

~~[(g) It shall be unlawful for any person, except a person with a valid horseshoe crab dredge permit, to take or attempt to take more than 300 horseshoe crabs per day.]~~

~~[(h) (It shall be unlawful for any person, except a person with a valid horseshoe crab dredge permit, to possess more than 300 horseshoe crabs at any time during the sequence of collecting said horseshoe crabs and placing said horseshoe crabs in a stationary cold storage or freezer facility.)~~

~~(i) It shall be unlawful for any person, except a person with a valid horseshoe crab dredge permit, to bring into the jurisdictional waters of this State any horseshoe crabs harvested from the Exclusive Economic Zone.]~~

[(h) It shall be unlawful for any person to collect or attempt to collect more than 300 cubic feet of horseshoe crabs during any 24 hour period beginning at 12:01AM and continuing through midnight next ensuing.]

S-55 Horseshoe Crab Dredging Restrictions

(a) It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased Shellfish grounds except on one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the

boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27279.67/42837.42 and then continuing west southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

(b) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than ~~4500~~ [1125] [1500] horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

(c) It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on May 1 and continuing through midnight, June 30, next ensuing.

[(d) It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crab dredge permit.]

S-57 Horseshoe Crab Reporting Requirements

~~[(a) It shall be unlawful for any person who has been issued a scientific permit, a beach clean up permit, a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit, or a commercial eel pot license if used to collect horseshoe crabs for personal, non-commercial use to not file a monthly report of his/her harvest of horseshoe crabs with the Department on forms provided by the Department on or before the 10th day of the next month. Monthly reports on horseshoe crabs shall be filed for each month whether horseshoe crabs are dredged or collected or not dredged or collected, and include the harvest by any person or persons authorized by S-54 and S-52 to assist with the collection of horseshoe crabs. Said forms shall require the reporting of the date, location, sex and number of horseshoe crabs dredged or collected.]~~

~~[(b) Any person who fails to file a completed monthly report with the Department on horseshoe crabs on or before the 10th day of the following month shall have his/her permit or authority to collect horseshoe crabs as a commercial eel fisherman, a commercial horseshoe crab collector or a horseshoe crab dredger suspended until such time that all delinquent reports are received by the Department.]~~

[(a) It shall be unlawful for any person who has been

issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a weekly basis. Said weekly reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a weekly report on his/her harvest of horseshoe crabs to the Department shall submit said report on or before 4:30PM on the Monday following the week covered by said report. If Monday is a legal State holiday, said report shall be submitted on or before 4:30PM on Tuesday, next ensuing. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number and sex of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

(b) Any person who fails to submit a weekly report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department.]

DEPARTMENT OF TRANSPORTATION

Statutory Authority: 17 Delaware Code, Section
~~508 and 29 Delaware Code, Chapter 84~~
(17 Del.C. 508, 29 Del.C. Ch. 84)

Summary of Evidence and Information Submitted

The Department of Transportation (Department) received written comments on the Mobility Friendly Design (MFD) Standards from Angelo Alberto of the Whitehall Community, Inc., New Castle County Councilman Richard Abbott, Mr. James Straight of Artesian Water, Mayor Robert Newman of the Town of Smyrna, and Mr. John Janowski of the New Castle County Department of Land Use.

Mr. Alberto favors the implementation of the MFD Standards and in his comments emphasized the need for flexibility, suggested a few word changes to clarify and/or strengthen the MFD Standards, and expressed interest in

seeing them expanded to include non-residential roadways. Councilman Abbott also favored the implementation of the MFD Standards and in his comments asked if the Department could do more to promote curvilinear street designs and raised a concern over the proposed width of sidewalks. Mr. Straight expressed concern over the availability of right-of-way for utility placement while Mayor Newman expressed some concern over how the MFD Standards related to access management regulations as well as over the availability of right-of-way for utility placement. Comments made by Mr. Janowski were mostly related to clarifying how the MFD Standards related to the New Castle County Unified Development Code.

Findings of Fact

Under its authority the Department of Transportation is adopting the Mobility Friendly Design Standards as an amendment to its *Rules and Regulations for Subdivision Streets* as an option for the development of local subdivision and minor collector subdivision streets. The Department is doing this to directly support the provisions of the Statewide Long Range Transportation Plan, and county and local transportation and comprehensive land use plans that seek to promote more traditional development patterns by giving greater emphasis to bicycle and pedestrian access and mobility.

Based on the comments received, the following is a summary of the changes made to Draft Mobility Friendly Design Standards:

Local Subdivision Streets

Network Design. The MFD Standards have been revised to make the connectivity index of 1.4 a requirement.

Utility/Planning Strip. The MFD Standards have been revised to from 5 feet to 10 feet. While this change the overall right-of-way width by 10 feet, it makes the area behind the curb available to utility companies is comparable to our existing street section.

Right-of way width. The right-of-way width has been increased from 42 feet to 52 feet to increase the area behind the curb to make it available for utility placement.

Alleys. The MFD Standards have been changed to remove the word 'landscaped' and it assumed that that right-of-way would include drainage.

Tree/Obstacle Clearance. The tree clearance distance was changed to be at least 3 feet from the back of curb to provide a wider corridor for the placement of utilities.

Minor Collector Subdivision Streets

Network Design. The MFD Standards have been revised to make the connectivity index of 1.4 a requirement.

Alleys. The MFD Standards have been changed to

remove the word 'landscaped' and it assumed that that right-of-way would include drainage.

Medians. The MFD Standards have been changed to encourage the use of medians, with additional right-of-way to be required if provided.

Tree/Obstacle Clearance. The tree clearance distance was changed to be at least 3 feet from the back of curb to provide a wider corridor for the placement of utilities.

Text and Citation

Purpose

The purpose of this amendment is to amend the Delaware Department of Transportation (Department) *Rules and Regulations for Subdivision Streets* to include Mobility Friendly Design Standards as an option for the development of local subdivision and minor collector subdivision streets. These standards are shown in Attachment 1.

Introduction

In the broadest sense and with regard to transportation, Mobility Friendly Design Standards are roadway design standards that promote greater use of transportation facilities and service by bicyclists and pedestrians. Such design standards include, but are not limited to, the addition of sidewalks and landscaped areas, narrower pavement widths, and a requirement for greater connectivity within developments. The addition of these standards will directly support the provisions of the Statewide Long Range Transportation Plan, and county and local transportation and comprehensive land use plans that seek to promote more traditional development patterns by giving greater emphasis to bicycle and pedestrian access and mobility.

Background

Early in 1997 the Wilmington Area Planning Council (WILMAPCO) began a study in partnership with the Town of Middletown, New Castle County, the Department, and their consultant team headed by LDR International. The purpose of this study was to develop a set of optional land development and street design standards to encourage greater use of the transportation system by pedestrians and bicyclist, to provide greater access to public transportation facilities and services, and to provide connections within and between existing and planned communities. These standards are known as Mobility Friendly Design Standards (Standards).

The study was initiated, in part, to support the Town of Middletown Comprehensive Plan, the long-range planning efforts of New Castle County, the WILMAPCO Metropolitan Transportation Plan, and *Transportation and*

Delaware's Future, the Statewide Long-Range Transportation Plan. Although these activities and products represent separate efforts, among their common goals is increasing accessibility of the transportation system and the mobility of its users by providing them with the widest range of travel options possible that are supported by sustainable transportation and land development systems.

The scope of the study was organized around three major activities. The first involved research on the various and most commonly used mobility friendly land development and street design criteria throughout the Country and their potential for application in Delaware. The second involved reviewing the land development regulations of the Town of Middletown to propose modifications that would support its desire to accommodate increased growth and economic development while retaining its current community character. The third task was to develop a set of subdivision street design standards for the Department that would support local efforts such as those being pursued by the Town of Middletown. The specific purpose of this portion of the study was to develop Standards for local subdivision and minor collector subdivision streets that could be incorporated into *Rules and Regulations for Subdivision Streets*, the manual under which the Department reviews subdivision streets.

The WILMAPCO study was completed in November 1997 and resulted in two major products. The first was a proposed set of revisions to the Town of Middletown zoning ordinance and site plan regulations. Subsequent to the completion of the study, the Town adopted the revisions with only a few minor modifications. The second product was a road standards matrix which proposed the standards needed by the Department to allow mobility friendly design. Although the Department actively participated in the study, there remained outstanding issues at its conclusion that limited the immediate adoption of its recommendations. These included how to address the relationship between the Standards and the Draft Statewide Access Management Program. Therefore, at the completion of the study the Department committed to more closely reviewing the criteria on the road standards matrix and to work out the details of their adoption and implementation. The Department has completed its review and is adopting the Standards through this amendment.

Implementation

The Department is updating its Access Management Program, which will affect where and how Mobility Friendly Design Standards are maintained within the family of Department regulations. As part of the Access Management Program, a Technical Design Manual is being developed that will include subdivision and entrance design standards, and clarify the relationship of such roads and connections with

the Road Design Manual. Within the Technical Design Manual, the Standards will be an option for application to subdivision streets.

In the short-term and until work on the Technical Design Manual is completed, the Standards for local and minor collector subdivision streets are being implemented by amending *Rules and Regulations for Subdivision Streets* through adoption of this amendment. This will allow the Standards to be utilized immediately.

Application

By providing the Standards as an option for the design of local subdivision and minor collector subdivision streets, the Department is supporting county and local governments that wish to implement land development patterns that provide more useable environments for pedestrians, bicyclists and transit users. The Department however, recognizes that for the Standards to be effective, they must be applied as a set and as part of municipally-based development strategy that emphasizes mobility and accessibility for pedestrians and bicyclists which is supported by appropriate land development regulations. With this in mind, the Department has established the following conditions under which applications of the Standards will be permitted:

The Standards must be applied in their entirety. While each individual element of the Standards has some impact on mobility, applied independently these affects would be too incremental to be effective. Therefore, the Standards must be applied as a set to best serve their stated purpose; and,

The Standards will be permitted in Multimodal Investment Areas and will be considered for application in Management and Preservation Investment Areas when they would be applied as part of an area wide development plan adopted by the county or local government.

Administration

As discussed above, in the short-term the Standards will be amended to *Rules and Regulations for Subdivision Streets* and will ultimately become part of the Technical Design Manual being developed for the Access Management Program. As such they will be administered by the Subdivision and Utilities Section of the Division of Preconstruction within the Department.

The adoption and implementation of these Standards by the Department through this amendment does not eliminate additional requirements that might apply through the application of *Rules and Regulations for Subdivision Streets*. These include but are not limited to requirements for the production and submission of construction plans, construction standards, utilities, inspection and maintenance, and traffic impact studies. Questions or issues that might

arise through the application of the Standards will be decided at the discretion of the Subdivision and Utilities Engineer.

Expiration

Management Program, this amendment will expire on the effective date of that manual.

Attachment 1

As the Standards will ultimately become part of the Technical Design Manual being developed under the Access

Local Subdivision Streets

Design Element	DelDOT Standard Subdivision	DelDOT Mobility Friendly Design Guideline
Network Design	None specified.	[Short interconnected streets and direct routes are preferred.] A [minimum] network connectivity index of 1.4, calculated as the number of roadway links divided by the number of nodes (i.e., intersections and cul-de-sac heads), is [preferred.] required .
Block Lengths	None specified.	Between 200 and 500 feet with the requirement that blocks longer than 500 feet include mid-block crosswalks and pass-throughs.
Design Speed	25 miles per hour.	20 miles per hour.
Intersection Design	T-intersection at 90 degrees.	T-intersections or four-way intersections preferred
All-way Stops	None specified.	Generally inappropriate as a method of speed control at low-volume intersections.
Corner Radius	25 feet.	Local to local subdivision street @ 25-foot radius Local to collector subdivision street with parking @ 30-foot radius Local to collector subdivision street without parking @ 40-foot radius
Maximum Cul-de-sac Length	500 to 1,000 feet, depending on density of development.	300 feet is the maximum permitted length of a cul-de-sac with it serving no more than 30 units and with cut-throughs provided at cul-de-sac heads for pedestrians and bicyclists.
Minimum Driveway Spacing	200 feet, with narrower lots calling for shared driveways.	50 feet, with narrower lots calling for alley access or shared driveways.
Minimum Driveway Width	12-foot standard, not minimum.	Between 8 to 16 feet for single family development, depending on setback of garage and number of cars; 18 feet for multi-family development.

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Right-of-way Width	50 feet for minor streets with 26 feet permitted under special circumstances.	42-52 feet. This is based on a 12-foot travel way, two one-foot curb offsets, one 7-foot parking lane, one 6-inch curb on each side of the street, one 5-10 -foot planting strip on each side of the street, and one 5-foot sidewalk on each side of the street.
Pavement Width	22 feet for minor streets (24 feet when offset from integral curb is considered).	21 feet. This is based on a 12-foot travel lane, two one-foot curb offsets, and one 7-foot parking lane. For these low volume roads, this pavement width assumes that in the cases when vehicles meet that they will be able to pass each other by finding space at driveways or in parking lanes to maneuver within.
Travel Lane Width	11 feet for minor streets	See above.
Parking Lane Width	None specified.	7 feet.
Pavement Edge Treatment	Mountable or barrier curbs. None are required at densities less than two units per acre and where the lots have greater than 100 feet of frontage and where buildings are set back at least 60 feet.	6 or 8-inch vertical curbs with closed drainage.
Horizontal Curve Radius	150 feet	90-foot minimum when the curve is unsigned, and a 45-foot minimum when the curve is signed as a traffic calming measure.
Vertical Curve Length	None specified.	60-foot minimum at a design speed of 20 miles per hour. For larger grade changes the Department will defer to AASHTO Figures III-11 for crest curves and III-43 for sag curves. When a short vertical curve is signed and marked as a traffic calming measure, no minimum standards apply.
Sidewalk Warrants	Not required by the Department. New Castle County requires sidewalks on at least one side of all local street with 10 or more units and densities greater than 1 unit per acre, and on both sides of minor collectors.	Required on both sides of the street.
Sidewalk Width	None specified. New Castle County requires 5 feet.	5 feet.
Planting Buffer/Utility Strip	None specified.	5-10 -foot minimum.

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Tree/Obstacle Clearance	A clear zone of 2 feet must be provided in urban areas where a barrier curb is provided.	[2.5 feet with vertical curb as measured from the back of the curb to the centerline of the tree.] [At least 3 feet with vertical curb as measured from the back of the curb to the centerline of the tree.]
Alleys	None specified.	Alleys are recommended when lots are less than 50 feet wide. When provided, a 20-foot landscaped right-of-way should be provided with a 12-foot paved width.
Traffic Calming Measures	None specified.	A full array of horizontal and vertical measures are allowed, consistent with a 20 mile per hour design speed.

Minor Collector Subdivision Streets

Design Element	DeIDOT Standard Subdivision	DeIDOT Mobility Friendly Design Guideline
Network Design	None specified.	[Short interconnected streets and direct routes are preferred.] A [minimum] network connectivity index of 1.4, calculated as the number of roadway links divided by the number of nodes (i.e., intersections and cul-de-sac heads), is preferred. required.
Block Lengths	None specified.	Between 200 and 500 feet with the requirement that blocks longer than 500 feet include mid-block crosswalks and pass-throughs.
Design Speed	30 miles per hour.	25 miles per hour.
Intersection Control	T-intersection at 90 degrees.	Roundabouts and two-way stops preferred to signals.
All-way Stops	None specified.	Unwarranted stop signs are not preferred but are acceptable when an engineering study shows unusually high cut-through traffic volumes or an unusually high accident rate.
Corner Radius		Local to collector subdivision street with parking @ 30-foot radius Local to collector subdivision street without parking @ 40-foot radius Collector to collector subdivision street with parking @ 25-foot radius

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		Collector to collector subdivision street without parking @ 50-foot radius
Maximum Cul-de-sac Length	500 to 1,000 feet, depending on density of development.	300 feet is the maximum permitted length of a cul-de-sac with it serving no more than 30 units and with cut-throughs provided at cul-de-sac heads for pedestrians and bicyclists.
Minimum Driveway Spacing	200 feet, with narrower lots calling for shared driveways.	50 feet, with narrower lots calling for alley access or shared driveways.
Minimum Driveway Width	12-foot standard, not minimum.	Between 8 to 16 feet for single family development, and 18 feet for multi-family development.
Right-of-way Width	60 feet for minor collector subdivision streets.	53 feet minimum to 60 feet maximum. The maximum right-of-way is based on two 10-foot travel lanes, two one-foot curb offsets, one 7-foot parking lane, one 6-inch curb on each side of the street, one 10-foot planting strip on each side of the street, and one 5-foot sidewalk on each side of the street. The minimum right-of-way can be used if on-street parking is eliminated.
Pavement Width	32 feet for minor collector subdivision streets (34 feet when offset from integral curb is considered).	22 feet minimum to 29 feet maximum. The maximum pavement width is based on two 10-foot travel lanes, two one-foot curb offsets, and one 7-foot parking lane.
Travel Lane Width	11 feet 4-inches for minor subdivision streets.	10 feet.
Parking Lane Width	None specified.	7 feet.
Pavement Edge Treatment	None specified.	6 or 8-inch vertical curbs with closed drainage.
Medians or Center Islands	None specified.	[Required] [Encouraged] on all multilane roads with additional right-of-way required if medians or center islands are provided.
Horizontal Curve Radius	300 feet.	167-foot minimum when the curve is unsigned or a 90-foot minimum when the curve is signed as a traffic calming device.

Vertical Curve Length	None specified.	75-foot minimum at a design speed of 25 miles per hour. For larger grade changes the Department will defer to AASHTO Figures III-11 for crest curves and III-43 for sag curves. When a short vertical curve is signed and marked as a traffic calming measure, no minimum standards apply.
Sidewalk Warrants	Not required by the Department. New Castle County requires sidewalks on at least one side of all local street with 10 or more units and densities greater than 1 unit per acre, and on both sides of minor collectors.	Required on both sides of the street.
Sidewalk Width	None specified. New Castle County requires 5 feet.	5 feet minimum.
Planting Buffer/Utility Strip	None specified.	10-foot minimum.
Tree/Obstacle Clearance	A clear zone of 2 feet must be provided in urban areas where a barrier curb is provided.	[5 feet with vertical curb as measured from the back of the curb to the centerline of the tree.] [At least 3 feet with vertical curb as measured from the back of the curb to the centerline of the tree.]
Alleys	None specified.	Alleys are recommended when lots are less than 50 feet wide. When provided, a 20-foot [landscaped] right-of-way should be provided with a 12-foot paved width.
Traffic Calming Measure	None specified.	A full array of horizontal and vertical measures are required, consistent with a 25 mile per hour design speed, except on primary emergency response routes

Decision

Pursuant to the authority in 17 Delaware Code, Section 508 and 29 Delaware Code, Chapter 84 and after due notice as required under the Administrative Procedures Act, the Department of Transportation is hereby amending *Rules and Regulations for Subdivision Street* by adopting the Mobility Friendly Design Standards, effective June 1, 2000.

Comments or questions regarding how these standards will be administered and under which circumstances the Department will allow their application should be directed to:

David DuPlessis, Subdivision Engineer
The Delaware Department of Transportation

Division of Planning and Policy
P.O. Box 778
Dover, DE 19903
(302) 760-2266 (telephone)
(302) 739-2251 (fax)
dduplessis@mail.dot.state.de.us

Secretary AnneP. Canby

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 209(a) (26 **Del.C.** 209(a))

In the Matter of the Regulation
Establishing the Minimum Filing
Requirements for All Regulated
Companies Subject to the Juris-
diction of the Public Service
Commission (Reopened May 26, 1999) |

**PSC Regulation
Docket No. 4**

ORDER NO. 5410

AND NOW, this 11th day of April, 2000, the Commission having considered the record as described in Order No. 5349 herein, along with the comments filed by Chesapeake Utilities Corporation (dated March 28, 2000), and the comments filed by Delmarva Power & Light Co. and United Water Delaware (both dated March 31, 2000);

IT IS ORDERED THAT:

1. As and for its summary of the evidence pursuant to 29 Del. C. § 10118(b)(1), the Commission incorporates by reference the summary of evidence set forth in Order No. 5349 herein.

2. Pursuant to 29 Del. C. § 10118(b), the Commission adopts the following findings of fact and conclusions of law.

3. *Part "A," Section I(C).* Staff proposed changes to this section of the Minimum Filing Requirements ("MFRs") for the principal purpose of curtailing the alleged practice, by some utilities, of modifying test period data late in the rate review process. With one non-substantive exception, the Hearing Examiner recommended the adoption of Staff's proposal in its entirety.

4. By its Order No. 5349, the Commission adopted the Hearing Examiner's recommendation; but it directed Staff to propose additional language that would vest in the Hearing Examiner the discretion to permit utilities to offer modifications in evidence simultaneously with the filing of rebuttal evidence, where extraordinary circumstances and the interests of justice so warrant.

5. In response to the Commission's directive, Staff proposed the following language:

Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility at any time prior to its filing of rebuttal evidence; provided, however, that if any party makes timely objection to the proffered modifications, such objections shall be promptly presented to the

Commission, the Presiding Officer or Hearing Examiner for a decision on due consideration of the parties' respective positions. For purposes of this Section I(C), an objection shall be timely if made within five (5) business days of the utility's proffer of modifications.

Notwithstanding anything to the contrary in this Section I(C), the Commission, Presiding Officer or Hearing Examiner may permit the utility to offer in evidence the modifications contemplated hereunder simultaneously with the filing of rebuttal evidence, where extraordinary circumstances and the interests of justice so warrant.

6. The Commission finds that Staff's proposal, as quoted above, is consistent with the directive to which it responds. The Commission further finds that, if adopted, the quoted language will promote fairness and efficiency in rate proceedings; and that it should, therefore, be adopted pursuant to 26 Del. C. § 106. The Commission, therefore, finally adopts the quoted language for inclusion within the MFRs.

7. *Parts "A" and "B," Section I(E).* This section addresses Staff's review of rate increase applications for compliance with the MFRs, and the consequences of non-compliance. Staff proposed that it be changed to permit Staff to reject defective applications where the defects are "so numerous or serious as to materially impair Staff's timely review of the application . . ." Delmarva, Chesapeake, and others opposed Staff's proposal on due process and other grounds.

8. The Hearing Examiner rejected Staff's proposal, concluding that because "Staff is akin to a party prosecutor in all rate proceedings[,] it would be unfair to permit Staff to reject rate applications on its own discretion. Report of the Hearing Examiner at ¶ 36. The Hearing Examiner agreed with Staff, however, that an amendment to this section is needed to allow Staff "sufficient time to fully review and investigate all of the complexities that are so typical of rate cases." Id. at ¶ 38. Accordingly, the Hearing Examiner recommended changes to this section that were (in large part) similar to those proposed by Staff, but which did not confer discretion on Staff to reject defective applications under any circumstances.

9. The Hearing Examiner's recommendation also added a new feature to the debate: It effectively provided that no rate application would be deemed finally filed with the Commission (for the purposes contemplated under the Public Utilities Act) until the completion by Staff of a review-and-notification process. Under the terms proposed by the Hearing Examiner, that process could take as long as fifteen days for non-defective applications, and as long as thirty days for defective applications.

10. Chesapeake and Delmarva took exception to the Hearing Examiner's recommendation, arguing (for example) that a non-defective application should be deemed filed *ab initio*. Chesapeake and Delmarva similarly alleged unfairness in the prospect that an application with only minor defects might be deemed filed a full thirty days after its actual filing date.

11. By its Order No. 5349, the Commission concluded that the Hearing Examiner's recommendation should be modified in two respects. First, the Commission concluded that non-defective applications should be deemed filed as of the date of their actual, initial filing. Second, the Commission concluded that where an application suffers from only minor defects, the presence of such defects should not affect the date on which it is deemed filed. Staff was, therefore, directed to propose new language that would effect these modifications.

12. In response to this directive, Staff proposed the following language:

The Commission Staff will review all filings for compliance with the format and instructions furnished herein and, within fifteen (15) days after the date of filing, specifically identify any noncompliance with such format and instructions, and immediately request the Commission's Secretary to promptly notify the utility of the alleged defects in compliance. Following such notification by the Commission's Secretary, the utility shall have fifteen (15) days within which to correct the alleged defects; and only upon the utility's filing of the corrected application shall such application be deemed filed with the Commission for the purposes contemplated under the Public Utilities Act. In the event the alleged defects are not corrected within the time provided hereunder, Staff may move the Commission to reject the utility's application for noncompliance with these Minimum Filing Requirements.

Nothing in this Section I(E) shall prevent a utility from filing an application in draft form for Staff's informal review and approval without prejudice, such informal review and approval not to be unreasonably withheld by Staff; nor shall this Section I(E) affect or delay the filing date, for the purposes contemplated under the Public Utilities Act, of rate applications that comply with the format and instructions furnished herein, or whose noncompliance with such format and instructions is deemed minor by the Commission or its Staff.

13. The Commission finds that Staff's proposal, as quoted above, is consistent with the directive to which it

responds. The Commission further finds that, if adopted, the quoted language will promote fairness and efficiency in rate proceedings; and that it should, therefore, be adopted pursuant to 26 Del. C. § 106. The Commission, therefore, finally adopts the quoted language for inclusion within the MFRs.

14. *Summary of action taken.* The Commission finally adopts, for inclusion within the MFRs, the amendments approved by this Order and by Order No. 5349.

15. Staff is directed to prepare a new and conformed version of the MFRs, consistent with the terms of this Order and Order No. 5349, and to submit the same promptly to the Registrar of Regulations consistent with 29 Del. C. §§ 1134 and 1135. The amendments shall be effective ten (10) days after the publication in the Register of Regulations.

16. The Commission retains jurisdiction in this matter, including the authority to make such further Orders as may be just or proper.

BY ORDER OF THE COMMISSION:

Robert J. McMahon, Chairman
 Joshua M. Twilley, Vice Chairman
 Arnetta McRae, Commissioner
 Donald J. Puglisi, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

*** PLEASE NOTE THAT A FULL-TEXT COPY OF REGULATION DOCKET NO. 4 CAN BE OBTAINED BY CONTACTING THE REGISTRAR OF REGULATIONS OR THE PUBLIC SERVICE COMMISSION.**

Excerpts of Amendments to Minimum Filing Requirements Adopted in Psc Order No. 5410 (April 11, 2000)

(Altered Text Underlined)

State of Delaware

Public Service Commission

Minimum Filing Requirements For All Regulated Companies Subject to The Jurisdiction of the Commission

PSC Regulations Docket Nos. 4, 7, & 8:

As Originally Promulgated by PSC Order No. 2144 (Nov. 5, 1980);

As Amended by PSC Order No. 2587 (Sept. 25, 1984);

As Amended by PSC Order No. 2704 (Dec. 12, 1985); and

As Amended by PSC Order No. 5410 (April 11, 2000).

**State of Delaware
Public Service Commission
Minimum Filing Requirements**

**State Of Delaware
Public Service Commission
Minimum Filing Requirements - Part A
Rate Increase Application - Major Utilities**

General Information

Background

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Purpose of Minimum Filing Requirements

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Compliance With Minimum Filing Requirements

It is intended that the required information be furnished in accordance with the format and instructions furnished herein. If exceptions are requested or proposed, they should be fully explained and justified. Exceptions may be granted if good cause is shown by the utility. The Commission Staff will review all filings for compliance with the format and instructions furnished herein and notify the utility within 15 days after the date of filing of any defects in compliance. The utility after such notification by the Commission Staff will then have 15 days to correct these defects.

General Rate Increase Defined . . .

Part A – Rate Increase Applications – Major Utilities

Part A applies to utilities or divisions thereof with annual gross intra-State revenues of \$1 million or more (at time of filing). When an application is made for a general rate increase, utilities with less than \$1 million of annual intra-State revenues, but which would exceed \$1 million if the proposed rates were to become effective, are subject to Part A of these regulations.

Part B – Rate Increase Applications – Small Utilities

...

Part C – Cost Adjustment Clauses – All Utilities

...

Part D – Issuance of Securities – All Utilities

...

Part E – Quarterly Reporting Requirements – Major Utilities

All major utilities, except Bell Atlantic-Delaware, Inc., subject to the jurisdiction of the Commission (i.e., those with annual gross intra-State revenues of \$1 million or more) are required to file quarterly information in accordance with the instructions in Part E. Such utilities should file the required financial data relative to the twelve months ended each calendar quarter not later than 60 days following the reporting quarter. No quarterly reporting is required for any utility whose annual gross intra-State revenues are less than \$1 million.

Part F – Annual Reporting Requirements – Small Utilities

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I. Instructions

A. Prefiling Announcement

...

B. Test Year and Test Periods

1. Test Year Defined.The test year is the actual historical period of time for which financial and operating data will be required. The test year data must include the actual “Per Books” results of operation for a 12-month period at the end of a reporting quarter. In addition, the twelve month period must end no later than seven months prior to the filing of the application, but no sooner than one month after the final closing of the test year (post reversal of accrual entries), so that actual expenditures are reflected in the books of account. For example, if the actual results of operations for the twelve months ending March 30, 200x, are used for the purposes of the test year, the application must be filed no sooner than April 30, 200x, but no later than October 31, 200x.

2. Test Period Defined.

...

Updating Projected Test Periods.

...

C. Testimony and Exhibits.

Prepared direct testimony and supporting exhibits must be filed coincident with the filing of the applications for rate relief. This filing requirement shall not prohibit the utility from subsequently submitting further testimony and exhibits in a timely fashion as necessary or proper to address issues raised during investigation of the application; nor shall it (or B.2., above) prohibit the utility from also proffering an exhibit or exhibits in the form of a fully projected test period (in addition to the test period described in I.B.2. above), provided (1) such period shall consist of twelve consecutive months ending not later than the end of the first year during which the proposed rates are to become effective; (2) it is supported by relevant testimony establishing a verifiable link between the test period defined in section B.2. and the projected test period; and (3) it is in format consistent with such test period.

Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility at any time prior to its filing of rebuttal evidence; provided, however, that if any party makes timely objection to the proffered modifications, such objections shall be promptly presented to the Commission, the Presiding Officer or Hearing Examiner for a decision on due consideration of the parties' respective positions. For

FINAL REGULATIONS

purposes of this Section I (C), an objection shall be timely if made within five (5) business days of the utility's proffer of modifications.

Notwithstanding anything to the contrary in this Section I(C), the Commission, Presiding Officer or Hearing Examiner may permit the utility to offer in evidence the modifications contemplated hereunder simultaneously with the filing of rebuttal evidence, where extraordinary circumstances and the interests of justice so warrant.

D. Due Date

...

E. Penalty for Non-Compliance

The Commission Staff will review all filings for compliance with the format and instructions furnished herein and, within fifteen (15) days after the date of filing, specifically identify any noncompliance with such format and instructions, and immediately request the Commission's Secretary to promptly notify the utility of the alleged defects in compliance. Following such notification by the Commission's Secretary, the utility shall have fifteen (15) days within which to correct the alleged defects; and only upon the utility's filing of the corrected application shall such application be deemed filed with the Commission for the purposes contemplated under the Public Utilities Act. In the event the alleged defects are not corrected within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these Minimum Filing Requirements.

Nothing in this Section I(E) shall prevent a utility from filing an application in draft form for Staff's informal review and approval without prejudice, such informal review and approval not to be unreasonably withheld by Staff; nor shall this Section I(E) affect or delay the filing date, for the purposes contemplated under the Public Utilities Act, of rate applications that comply with the format and instructions furnished herein, or whose non-compliance with such format and instructions is deemed minor by the Commission or its Staff.

F. General Guidelines

...

Schedule No. 2 - B
INTANGIBLE ASSETS CLAIMED IN RATE BASE

Delaware Public Service Commission

Company: _____

Docket No. _____

Witness Responsible: _____

Table with 4 columns: Line No., Description, Date of Acquisition, Net Original Cost. Includes sub-headers: Allocation Percentages, Jurisdictional Net Original Cost, Expected In Service Date, Expected Use of Asset.

State Of Delaware
Public Service Commission
Minimum Filing Requirements - Part B
Rate Increase Application - Small Utilities

I. Instructions

A. Prefiling Announcement

...

B. Test Year

1. The test year is the actual historical period of time for which operating and financial data will be required. The test year must include the actual "Per Books" results of operation for a twelve month period ending no more than four months prior to the filing of the application for increased rates. In addition, the twelve-month period must end no later than seven months prior to the filing of the application, but no sooner than one month after the final closing of the test year (post reversal of accrual entries), so that actual expenditures are reflected in the books of account. For example, if the actual results of operations for the twelve months ending March 30, 200x are used for purposes of the test year, the application must be filed no sooner than April 30, 200x, but no later than October 31, 200x.

...

...

C. Due Date

...

D. Testimony and Exhibits

...

E. Penalty for Non-Compliance

The Commission Staff will review all filings for compliance with the format and instructions furnished herein and, within fifteen (15) days after the date of filing, specifically identify any non-compliance with such format and instructions, and immediately request the Commission Secretary to promptly notify the utility of the alleged defects in compliance. Following such notification by the Commission's Secretary, the utility shall have fifteen (15) days within which to correct the alleged defects; and only upon the utility's filing of the corrected application shall such application be deemed filed with the Commission for the purposes contemplated under the Public Utilities Act. In the event the alleged defects are not corrected within the time provided hereunder, Staff may move the Commission to

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F. General Guidelines

...

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Funeral Services	Mr. Lyle Dabson	04/03/03
Board of Medical Practice	Dr. Constantine Michell	04/07/03
Board of Occupational Therapy	Ms. December E. Hughes	04/07/03
Commission for the Purchase of Products and Services of the Blind	Mr. James G. Cagle	Pleasure of the Governor
Council on Forestry	Ms. Mary Burton	04/10/03
Court of Common Pleas of the State of Delaware for Sussex County	Mr. Kenneth S. Clark, Jr Judge	04/28/12
Delaware Board of Examiners of Nursing Home Administrators	Ms. Elizabeth Ann Happoldt	04/03/03
Delaware Board of Nursing	Ms. Doris Dayton Ms. Gwelliam Hine Ms. Sheila McMahon Ms. Matilda Purnell	04/03/03 04/03/03 04/03/03 04/03/03
Developmental Disabilities Planning Council	Mr. Goodwin Cobb, III Ms. Theda M. Ellis Ms. Brenda S. Kramer Ms. Jamie Wolfe	03/20/03 04/03/03 04/03/03 03/20/03
Environmental Appeals Board	Mr. Donald E. Dean	03/27/03
Family Court of the State of Delaware for Kent County	Ms. Mardi F. Pyott, Judge	03/31/12
Foster Care Review Board	Ms. Andrea M. Alston Ms. Shirley J. Butler Mr. Patrick Casey Ms. Mary K. Field Ms. Marion Gibbs Mr. Edmund M. Hillis Ms. Ellen W. Holler Mr. Salvatore J. Leone, III Ms. Judith G. Lewis Ms. Lydia Massey Ms. Nancy P. Meadows Ms. Pamela Meyer Mr. Thomas Moore, Jr. Mr. Rodney C. Smith Ms. Delores A. Taylor Mr. Richard W. White	03/27/03 03/27/03 03/27/03 03/27/03 03/27/03 04/11/02 03/27/03 04/17/03 03/27/03 03/27/01 03/27/03 03/27/03 03/27/03 03/27/03 03/27/03 03/27/03

GOVERNOR'S APPOINTMENTS

1585

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Task Force on School Libraries	Ms. Harriett B. Hook	03/27/03
	Ms. Marilyn Kulkarni	03/27/03
	Mr. John J. Micklos, Jr.	03/27/03
	Ms. Mary Tise	03/27/03
Industrial Accident Board	Mr. Harold B. Barber	04/04/06
Justice of the Peace for the State of Delaware for New Castle County	The Honorable	03/29/04
	Mr. Roberto C. Lopez	
Justice of the Peace for the State of Delaware for New Castle County	The Honorable	04/24/04
	Marie E. Page	
State Board of Architect	Mr. Page Nelson	04/04/03
State Board of Electrical Examiners	Mr. C. Leroy James	04/04/03
State Board of Examiners of Psychologists	Mr. Frank E. Szczuka, Jr.	03/20/03
State Board of Plumbing Examiners	Mr. Wayne R. Reed	04/17/03
	Mr. Carey G. Saddler, III	04/17/03
State Board of Social Work Examiners	Mr. Claude Massey	04/04/03
	Mr. Thomas C. Tulley	04/04/03
State Rehabilitation Advisory Council	Mr. Mark A. Chamberlin	04/17/03
	Ms. Kathleen M. Moen	04/17/03
	Ms. Jamie Wolfe	03/20/03
Superior Court of the State of Delaware for Sussex County	Mr. E. Scott Bradley Associate Judge	04/07/12
Unemployment Insurance Appeals Board	Mr. Elmer L. Newlin, III	06/17/05
Violent Crimes Compensation Board	Ms. Leah W. Betts	04/04/03
Water Supply Coordinating Council	The Honorable Nicholas A. DiPasquale, Chairperson	Pleasure of the Governor
Workforce Investment Board	Mr. Wayne A. George	Pleasure of the Governor
	Ms. Patricia Troy	Pleasure of the Governor

DEPARTMENT OF PUBLIC SAFETY**BOARD OF EXAMINERS OF CONSTABLES**

Statutory Authority: 10 Delaware Code, Ch. 27
(10 Del.C. Ch. 27)

Public Notice

Notice is hereby given that the **Board of Examiners of Constables**, in accordance with Del. Code Title 10 Chapter 27 proposes to repeal Adopted Rules 09/10/86 – Age; 09/10/86 – Badge and/or Identification Card, 09/10/86 – Employers, and 09/10/86 – Mailing Address. These Rules are already in the Law. The Board also proposed to Amend Rules 09/10/86 – Experience, 09/10/86 – Character, 09/10/86 –fingerprinting, 09/10/86 – Employment, 09/10/86 – Application Fee, 09/10/86 – Appeal, 09/10/86 –Application, and 10/17/96 – Law Enforcement Exemption. These amendments will compile and clarify the expectations of individuals applying to become Constables. If you wish to view the complete set of Rules & Regulations, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by May 31, 2000, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903; The Board will hold its annual meeting Tuesday, May 16, 2000, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

**Board of Examiners Of Constables
Promulgated
Rules and Regulations**

**09/10/1986-1 - EXPERIENCE
AMENDED 05/00/00**

A constable must meet the minimum training standards for a full-time police officer as established by the Council on Police Training

09/10/1986-2 - APPEAL

Any applicant who is rejected for a commission as a constable may, within 20 days of such notice of rejection, submit a written notice of appeal.

A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.

Such proceedings shall be conducted in accordance with the administrative procedures act (Title 20).

The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

**10/16/1996-3 - LAW ENFORCEMENT EXEMPTION
AMENDED 05/00/00**

Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.

Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory) and a comprehensive, multiple-choice examination, equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

05/00/2000-4 - EMPLOYMENT

All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency

All applicants must submit a MMPI - Minnesota Multiphasic Personality Inventory.

All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.

No full-time police officer may apply for a commission as a constable.

All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.

A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS IN OPTOMETRY**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2104(1), the Delaware Board of Examiners in Optometry proposes to revise its rules and regulations. The proposed revisions clarify the Board's law as it relates to therapeutic licensing for reciprocity applicants. Specifically, the proposed revisions to Rule 4.0 provide that an applicant, therapeutically licensed in another state, must demonstrate that that state allows the use and prescription of diagnostic and therapeutic drugs at least equivalent to that permitted by Delaware. If the state from which the applicant seeks reciprocity is not therapeutically equivalent, the applicant must meet the requirements of 24 **Del.C.** §2108. Proposed revisions to Rule 11.0 further clarify the requirements for therapeutic certification and specify that the 40 hours of clinical experience required under §2108(b) must be obtained no earlier than 24 months prior to application.

A public hearing will be held on the proposed Rules and Regulations on Thursday, June 15, 2000 at 6:45 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

The Harness Racing Commission proposes to amend certain rules. The following is a summary of the proposed rules:

1. Amend Rule 8.3.5.4 to clarify the time period for administration of lasix to horses and to delete the provision for removal of a horse from the Steward's List for multiple violations of the Rule.
2. Amend Rule 7.6.14 to revise the Hubrail Rule to

conform to the current use of pylons on the racetrack and to require that a driver who leaves the course must reenter as soon as possible.

3. Amend Rule 7.6.15 to clarify the rule requirements for use of the extended homestretch and the penalties for violation of the Rule.

4. Amend Rule 7.6.13 to provide that any driver involved in an objection or inquiry must immediately respond to an inquiry from the judges.

5. Amend Rule 3.2.8.3 to require that horses scratched for lameness or sickness must be on the Steward's List for seven days, instead of five days.

6. Amend Rule 7.6.6 to delete Rule 7.6.6.6 regarding use of a recall pole.

7. Amend Rule 6.3.2 to add new subsection 6.3.2.8 prohibiting a person from claiming more than one horse in the same race. Amend Rule 6.3.2 to add new subsection 6.3.2.9 to prohibit transfer of a claimed horse for a period of thirty days after the claim, except for entry in a claiming race.

8. Amend Rule 8.4.3.5.10 to revise the procedure for the use of split samples for carbon dioxide testing to provide that both samples would be sent to the Commission laboratory on an anonymous basis for testing.

The Commission proposes these amendments pursuant to 3 **Del.C.** §10027 and 29 **Del.C.** §10113. The Commission will consider the proposed rule changes at a public hearing on May 22, 2000 at 10:30 a.m. at Harrington Raceway, Harrington, DE. The Commission will receive written comments from the public until May 30, 2000. Copies of the proposed rules and current rules can be obtained from John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. Written comments can be sent to Mr. Wayne's attention at the Commission's Office.

THOROUGHBRED RACING COMMISSION

The Delaware Thoroughbred Racing Commission proposes several rule amendments to the Rules of Racing of the Delaware Thoroughbred Racing Commission. The Commission proposes the rules pursuant to 3 **Del.C.** §10103 and 29 **Del.C.** §10118. Although the proposal contains many proposed changes, the changes for the most part are stylistic changes designed to clarify the role of the Commission and the racetrack in the racing operations.

The Commission will receive written public comments from May 1, 2000 through May 30, 2000. The Commission will hold a public hearing on May 23, 2000 at 10:00 a.m. at Delaware Park, Stanton, DE. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S.

DuPont Highway, Dover, DE 19910. Copies of the proposed rules can be obtained from the Commission office at the above address.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, May 18, 2000 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MENTAL RETARDATION

PUBLIC NOTICE DMR Eligibility Criteria

In compliance with the State's Administrative Procedures Act (APA – Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS)/Division of Mental Retardation is amending its eligibility.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than June 1, 2000, at the DMR Administrative Office, Jesse Cooper Building, Federal Street, Dover, DE 19903, attention Susan Morrison Smith. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Division of Mental Retardation office will be available for public inspection in the DMR Administrative Office at the address given above. Please call (302) 739-4386, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

DEPARTMENT OF PUBLIC SAFETY

BOARD OF EXAMINERS OF CONSTABLES

Public Notice

Notice is hereby given that the **Board of Examiners of Constables**, in accordance with Del. Code Title 10 Chapter 27 proposes to repeal Adopted Rules 09/10/86 – Age; 09/10/86 – Badge and/or Identification Card, 09/10/86 – Employers, and 09/10/86 – Mailing Address. These Rules are already in the Law. The Board also proposed to Amend Rules 09/10/86 – Experience, 09/10/86 – Character, 09/10/86 –fingerprinting, 09/10/86 – Employment, 09/10/86 – Application Fee, 09/10/86 – Appeal, 09/10/86 –Application, and 10/17/96 – Law Enforcement Exemption. These amendments will compile and clarify the expectations of individuals applying to become Constables. If you wish to view the complete set of Rules & Regulations, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by May 31, 2000, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903; The Board will hold its annual meeting Tuesday, May 16, 2000, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

PUBLIC SERVICE COMMISSION

That the Commission proposes to amend its rules and regulations by: (a) repealing, in their entirety, the *"Interim Rules Governing Competition in the Market for Local Telecommunications Services,"* adopted in PSC Order No. 4468 (April 8, 1997); (b) repealing in their entirety, the *"Rules for the Provision of Competitive Intrastate Telecommunications Services,"* as adopted in PSC Order No. 3283 (June 18, 1991); and (c) adopting *Rules for the Provision of Telecommunications Service* as set forth in Attachment 3 to Exhibit "A" of this Order.

That the Commission withdraws the proposed revisions adopted in PSC Order No. 4949 (Nov. 17, 1998) in light of the action proposed in paragraph one above.

That the Commission seeks public comment and input concerning its proposal to repeal the present Docket 10 and 45 Rules and to adopt the proposed *Rules for the Provision of Telecommunications Services* and, for this purpose, to comply with the requirements of 29 *Del. C.* §§ 1133 and 10115, the Commission hereby issues the Notices of Proposed Repeal and Adoption of Rules for the Provision of Telecommunications Services attached hereto as Exhibits "A" and "B" for publication, respectively, in the Register of Regulations and in two (2) newspapers of general circulation

in the State.

That the Secretary shall transmit the Notice of Proposed Repeal and Adoption of Rules for the Provision of Telecommunications Services attached as Exhibit "A," together with copies of the existing text of the Docket 10 and 45 Rules and the proposed *Rules for the Provision of Telecommunications Services*, to the Registrar of Regulations for publication in the Register of Regulations on May 1, 2000, as required by 29 *Del. C.* 10115. In addition, the Secretary shall, contemporaneous with such transmittal, cause a copy of the Notice attached as Exhibit "A" and the existing Docket 10 and 45 Rules and the proposed *Rules for the Provision of Telecommunications Services* to be sent by United States Mail to: (1) all prior participants in this proceeding; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

That the Secretary shall cause the publication of the Notice of Proposed Repeal and Adoption of Rules for the Provision of Telecommunications Services attached hereto as Exhibit "B" to be made in *The News Journal* and the *Delaware State News* newspapers on the following dates, in two column format, outlined in black:

May 1, 2000 (for *The News Journal*)

May 1, 2000 (for the *Delaware State News*)

That the Commission will conduct a public hearing on the proposed repeal of the present Docket 10 and 45 Rules and the adoption of the proposed *Rules for the Provision of Telecommunications Services* during its regular public meeting at its Dover office on Tuesday, June 6, 2000, beginning at 1:00 PM.

**DELAWARE RIVER BASIN
COMMISSION**

P.O. Box 7360 West Trenton

The Delaware River Basin Commission will meet on Tuesday, May 2, 2000, in West Trenton, New Jersey. For more information contact Pamela M. Bush at (609) 883-9500 extension 203.

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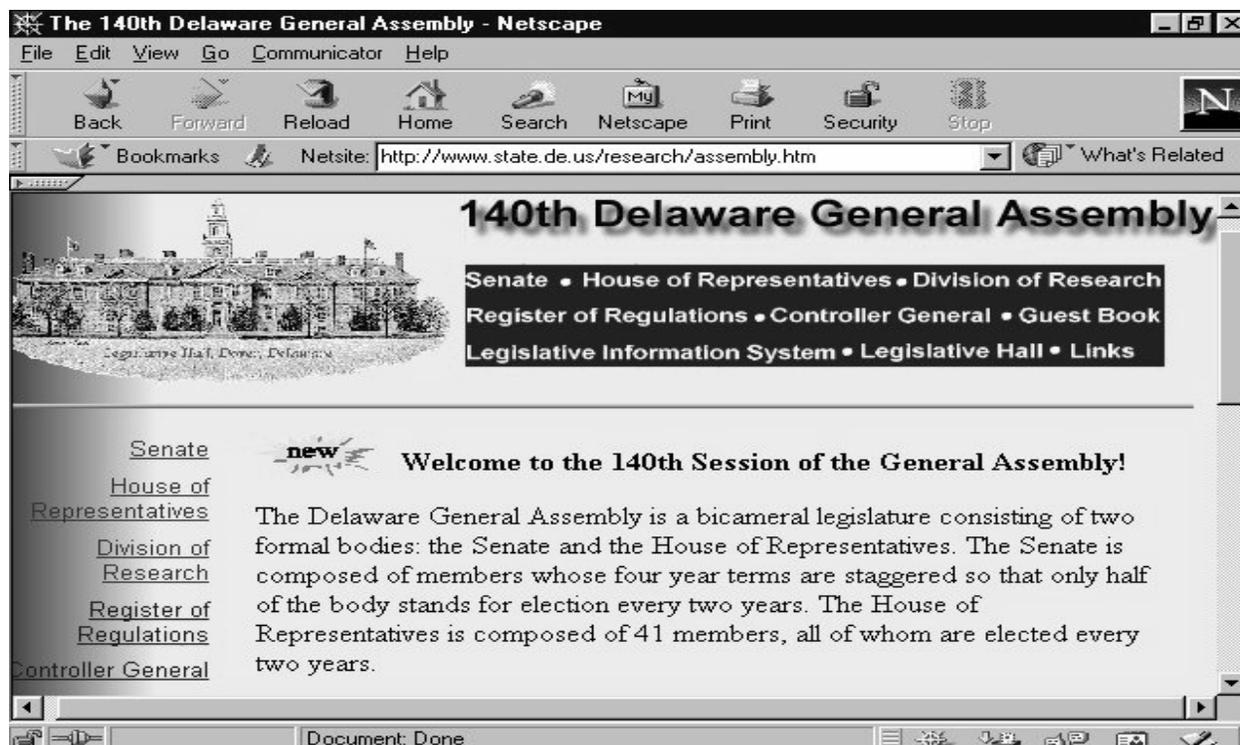
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